85-688

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

FRANK PIETRONIRO, Vice-President,
MARY PIETRONIRO, Pres.,
PIET CORPORATION

Petitioners,

v.

BOROUGH OF OCEANPORT, CLEMENT SOMMERS, ELWOOD BAXTER, LOUIS SYLAVIN, GEORGE BARRETT, NICHOLAS LEONE

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE THIRD CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

I. Did the Third Circuit Court of Appeals violate appellees' due process and equal protection rights:

(a) Ruling, as a matter of law, that a select class of commercial operator could be accorded preferential assistance over other commercial operators, similarly situated and displaced, in an urban renewal area? and:

(b) Where sufficient evidence at trial demonstrated a causal nexus establishing that petitioners were not given the same, maximum relocation advisory assistance to the KINCAID and RATTI tracts given to other displacees.

II. Did the Third Circuit Court of Appeals create a conflict within the Circuits under the Uniform Relocation Assistance Act of 1972 and the Housing Act of 1949 in making these conclusions of law and findings in its opinion?

III. Are there important questions of federal law under these Congressional Acts which should be decided and settled by the United States Supreme Court, including but not limited to the fact the Third Circuit Court of Appeals has decided a federal question under federal law in a way that conflicts with applicable Supreme Court decisions, failing to follow procedural review standards?

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment states,in part;

> "..nor shall any State deprive any person of life, liberty, or property without due process of law..or deny equal protection under the law".

42 U.S.C. 1983 states:

> "Every person who, under color of any statute..regulation..of any State or Territory, subjects or causes to be subjected, any citizen of the U.S. or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law...."

The Housing Act of 1949, 42 USC 1455 (c)(1) states:

> "There shall be established, at the earliest practicable time, for each urban renewal project involving displacement of..business concerns..a relocation advisory assistance program which shall include..services as may be necessary and appropriate to (B) provide information and asistance to aid in relocation and minimize hardships of displacement..;and (C) assure necessary coordination of relocation activities with other project activities.." (EMPHASIS ADDED)

The Uniform Relocation Assistance Act of 1972, 42 USC 4601, 4625 states:

> "Displaced Person means any person who moves from real property

..as the result of the written order of the acquiring agency to vacate.. for a program receiving federal financial assistance..on which such person conducts a busines.. Person means individual or corporation." 42 USC 4601 (5) (6).

"Federal and State and Local agencies..shall cooperate to the maximum extent feasible with the.. agency causing the displacement to assure that such displaced persons receive maximum assistance (c) Each relocation assistance advisory program..shall include measures and services necessary to..

(1) Determine the need, if any, of displaced persons for relocation assistance;
(2) Provide current and continuing information on the availability, prices and rentals of comparable commercial properties and locations for displaced businesss; (EMPHASIS ADDED)
(4) Assist a person displaced from his business in obtaining and becoming established in a suitable replacement location.(EMPHASIS ADDED)
(6) Provide other advisory assistance..to minimize hardships..in persons adjusting to relocation. 42 USC 4625 (c); 24 CFR 42.115.

24 CFR 42.105 states:
"State agencies shall develop and implement a relocation assistance advisory program..to provide maximum assistance..and assure that (business displacees) are assisted in reestablishing with a minimum

of delay and loss of earnings.."

Federal HUD Handbook regulations 1320.1 and 1371.1 provide:

"A relocation plan must be submitted to HUD to qualify for federal funding which must include a full description of the relocation assistance to be provided..including the local agency's proposals for providing a relocation assistance advisory program described within 42 USC 4625 and 24 CFR 42.115

"..(b) Business concerns (shall be)..provided maximum assistance to aid in their satisfactory reestablishment with a minimum of delay and loss of earnings..(c). program activities be carried out in a manner that minimizes hardships..(g) Displaced persons be afforded the opportunity of participating in the formulation of relocation plans..and be provided full information.."

"..(b)..Services to be provided.. (2) The local agency shall provide current and continuing information on the availability, costs, and square footage of comparable commercial, industrial or farm locations and make referrals to real estate brokers..providing maximum assistance..but avoiding involvment with the decisions of the business owner.."(EMPHASIS ADDED)

"..Real property acquisition activities shall be coordinated with relocation activities..The local agency shall..periodically review the quality and quantity of relocation services provided....."

Additionally, the local agency is not to terminate assistance until the business has received all of its relocation payments and advisory assistance and has either successfully relocated or voluntarily has ceased operations.

STATEMENT OF JURISDICTION AND OPINIONS BELOW

The jurisdiction of the District Court was invoked under 28 USC 1331, 1343, 42 USC 1983. The juridiction of this Court is invoked pursuant to 28 USC 1257(3) and 28 USC 1254. The judgment of the Third Circuit Court of Appeals sought to be reviewed was rendered June 18, 1985, with Rehearing In Banc summarily denied without opinion on July 18, 1985. (App. pp. A5-A20)

STATEMENT OF THE CASE

After a trial in New Jersey Federal District Court, petitioners Frank Pietroniro and Piet Corporation obtained a judgment of $197,950.00 on October 17, 1983. The jury found that the petitioners, who were urban renewal business displacees in Oceanport, N.J., had not received maximum, proper relocation advisory assistance by defendants

for the relocation of their displaced liquor license and that defendants had acted in bad faith towards petitioners in the implementation of the renewal.

On direct appeal, the Third Circuit Court of Appeals reversed the judgment on June 18, 1985 and denied rehearing on July 18, 1985. The Court ruled that defendants:

(a) were not obligated, after 1975, to assist petitioners in obtaining replacement land the municipality had acquired during the renewal (e.g."Ratti Area"); and [1/]

(b) could permissably render preferential relocation advisory assistance to a select class of professional commercial operator over petitioners in those select individuals obtaining replacement land in the above area. [2/]

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[1]/The renewal "Ratti" area was subject to Congress' national goals developmental ratio of 51 per cent residential- 49 per cent commercial, ignored by the Appeals Court. The defendants had exclusive control over the area in making parcels available for sale and redevelopment.They extended an option to one class but re-

Due to these specific conclusions of law, the Court of Appeals found there was insufficient evidence to support the verdict. Another erroneous finding also led to this belief. The opinion stated that petitioners stipulated that five alternative business locations had been referred through defendants' advisory assistance and that petitioners had conceded that the only acceptable alternative location was a residential parcel. Direct evidence at trial, however, demonstrated that only four and not five of these locations were referrals. The fifth location, the "Kincaid" tract, was never a stipulation nor referral by the defendants. Such demonstrates a grave error and mistake made in fused to extend any similar purchase options to petitioners on a like parcel.

[2]/ It is also important to note that the defendants used the relocation advisory assistance program to make commercial recommendations to an independent Board of Adjustment to aid in the select class of professional commercial operator obtaining that Board's concurring approval.

the findings of the Appeals Court.

Most signifigantly, uncontroverted lay and expert testimony at trial demonstrated the Kincaid tract to be an acceptable, commercial, alternative location for petitioners, had it been properly referred under the relocation statutes. This was duly brought to the attention of the Appeals Court in the petition for Rehearing In Banc, which was summarily denied without opinion. (App. Pg. A20).

Evidence regarding the Kincaid tract permeated over forty pages in the record, wherein defendants admitted it was zoned commercial, they knew it was available, and

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3/ It is important to note that defendants' refusals to sell petitioners a renewal parcel precluded petitioners from obtaining a variance in the first instance, having no land to base the relocation or variance upon. Such preclusion, caused by defendants' inaction in failing to render relocation assistance to facilitate same (e.g. failing to make renewal land available so proper application could be initiated by petitioners) such arbitrary and capricious conduct violates their guarantees of due process under the law. Sixth Camden v. Evesham,

expert Heaslip testified its location was valuable to petitioners:

> " Remarkable aspect of it is I would presume that the name that Piet Corporation would wish to maximize the name under which it operated for 15 odd years; in other words, the Colonial Jockey Room..Relocating to either one of those locations(referring in part to the Kincaid tract) would put it (Piet)closer to the track and it could have maximized what it already had going for it; in other words, 15 years of reputation with a name associated with racing.."[222]/

Pietroniro and Bataas, another displaced licensee, testified defendants failed to refer the Kincaid parcel in the advisory assistance program.[222]/ Petitioners seek review herein upon due process and equal protection rights for business dis-

[222]/ Testimony of Sommers, Boynton, Bataas, Heaslip App. Record A2021, A2022, A1645, A1648, A2628; Barrett, Leone and Sylvain at A2171, A2172, A2214, A2438; Pietroniro at A1119,A1122, A864. Leone admitted he did not provide Piet with proper referral information with Kincaid missing from Sylvain's own referral lists through his testimony and letters. Sylvain at A2262-A2264,A2348; Leone at A2202, A2203,A2204. Bataas at A713, A714,A686, A687.

[3]/ 420 F. Supp. 709, (D.N.J. 1976); Cutting v. Muzzey, 724 F.2d. 259 (1st Cir. 1984); Scott v. Greenville, 714 F.2d. 1409(4th Cir. 1983).

placees within federally funded urban renewal projects throughout the United States under the relevant federal acts and statutes heretofore enumerated.[4]/ The factual circumstances material to a consideration of the questions presented are set forth as follows.

A. DISTRICT COURT TRIAL PROCEEDINGS

Petitioners operated a tavern, food and apartment business, 1961-1975, in Oceanport, N.J. having a "Broad C" liquor license, which forms the res of this case.[5]/ They were displaced pursuant to a federally funded renewal program. The license remains unrelocated to date due to denials of maximum assistance in obtaining a suitable replacement site. The

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[4]/ The treatment accorded the similarly displaced professional commercial operators underscores the procedural disparity in this program. The petitioners suffered denials of relocation assistance and the denials by the defendants impermissably infringed upon their constitutional rights and right of association. Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536 (1974).

Petitioners have expended $5,500.00 in license renewal fees from 1975-1985 while being deprived of the use and benefit of it due to defendants' denials of proper relocation advisory assistance.

To initiate federal funding, the municipality was required to submit broad relocation plans to the United States Department of Housing and Urban Development. ("HUD") Under 42 USC 1455, 4625, 24 CFR 42.105, 42.115, the locality is obligated to: (a) assist a displaced business in obtaining a suitable replacement location rendering maximum assistance;[6] and (b) provide current and continuing information on the availability, prices, costs, and square footage of comparable commercial properties and locations.

[5] The liquor license is extremely valuable, allowing an operator to sell "on-premises" consumption and "off-premises" package liquor as a separate partitioned business.

[6] To provide maximum assistance, defendants had the duty to adhere to Congress' 49 per cent commercial redevelopment national goals program and, in effect, make land available in the renewal to business dis-

In 1972, public hearings were held on the renewal for citizen imput. Oceanport's Planner and Defendant Baxter represented businesses would be extended relocation opportunities in the renewal area, which encompassed the earlier existing business district from which they were displaced, (the "Ratti" area) which was initially zoned totally residential. Under Congress' national goals development program, the area was subject to a 51 per cent residential-- 49 per cent commercial redevelopmental ratio as the need arose for business relocation. This was so acknowledged in the trial record by defendants:

placees as the need arose for them to obtain a suitable replacement location.Home Furniture v. HUD, 324 F. Supp. at 1404 (D. C. N. Car. 1971); Battison v. City of Niles, 445 F. Supp. 1080 at 1085. (D. C. N. Ohio 1977) This is to be accomplished by defendants releasing some renewal land either under purchase option designated as commercial or designated as initially residential subject to petitioners then applying for a variance, as the professional commercial operators did using the advisory assistance program, once the purchase option is duly and rightfully extended to them. (EMPHASIS ADDED)

BAXTER: "..It is taken land. It will be rendered residential, 51 per cent of it. We are operating within the parameters of this program and we would certainly want to take care of people as part of our relocation project.." (Record A1532)

BAXTER: "..Because under national goals.. we are forced to render 51 per cent of all disposable land to residential use.." (Record A1533)

PLANNER LONERGAN: "..Right now, the master plan calls for this entire area as residential..This is the recommendation..with provisions ..in the plan..existing businessmen in an area around..Oceanport Ave..would be allowed to remain so long as they serve the existing neighborhood.... such as the bars and gas stations.. we see they are needed someplace... There is nothing to stop you from saying that next year, as things develop and more information is available that you cannot designate something more in here for commercial..".(Record A1539)

"..Again bearing in mind..you have to keep in mind national goals and cannot exceed 51 per cent of the area for non-residential (commercial) uses..".(Record A1540)

SOMMERS: "..The possibility exists but it would depend upon the finalization of a firm plan..They also pointed out there was a national goal that 51 per cent..a minimum.. had to be residential in use... Q. Then 49 per cent could have been commercial?..A. Yes..according to the general outlines of national goals.." (Record A2070)

HUD official Pat Burke: "..The town does have authority to pass an ordinance or resolution stating the right to acquire land..or the new development will be first given to relocatees from the project..This kind of thing is done for residential relocatees.. and also can be done for businesses."7/ "..Most of the relocation foreseen in this project is business."(Record A2077-2078)

From 1974-1975, Petitioners endured real property condemnation, continuing at the premises in tenancy to the Boro, which was pervaded by numerous violations by defendants of HUD regulations, which governed the tenancy, including:

(a) Failing to charge proper rental rates set by appraisers, excluding utility charges from same, violating HUD regulation 7211.1;

(b) Failing to consider petitioners' lost apartment income, failing to adjust rental rates upon income (caused by vacancies of three apartments over the

7/ - Defendants were council members on the LPA ("Local Public Agency") and Office of Community Development, administering the renewal. Only three of eighteen displaced businesses would relocate within Oceanport by 1980.

tavern due to the project);[8/]

(c) Exercising set-offs of accrued rental charges from a three-month damage award secured by petitioners against the locality, a temporary relocation hiatus, in violation of 24 CFR 42.180;[9/]

In addition to these relocation assistance denials, the defendants were also obligated to establish an effective relocation assistance advisory program for business reestablishment. The overwhelming weight of the evidence at trial showed that four, not five inadequate alternative locations were referred by defendants in this program for placement of petitioners' license, to-wit:

(a) The Arnold and Stalder Properties;

(b) The Teicher Complex;

(c) The Monmouth Park Track Property.[10/]

8/ The rentals charged were not based upon hardship or ability to pay, violating the regulations.

9/ 24 CFR 42.180 specifies that the LPA cannot set off claims unless court proceedings are instituted to collect rentals.

Overwhelming evidence at trial showed that the fifth location, the "Kincaid" tract the defendants failed to refer during 1973-1974, when petitioners were investigating options for relocation of the license during condemnation.[11]/ The defendants admitted "Kincaid" was zoned commercial, that they knew it was available, and Mr. Heaslip, a real estate witness, testified its location was especially valuable to petitioners. Another displaced licensee, Mr. Bataas, testified it also was never referred to him by defendants before its sale to Monmouth Park in November, 1974.[12]/

10/ These properties were economically infeasible, subject to wetlands building moratoriums, and costly,with the Teicher site not allowing petitioners to carry on their prior food and apartment rentals and package liquor store operation. The Monmouth Park property was never available for either sale or rental, as a "sham" referral.

11/ Pietroniro testified clearly "Kincaid" was never referred, that he did not purchase same since he was not aware it was available until after it was sold to the Track in 1974, and it was not mentioned in Sylvain's referral correspondence in evidence before the November 1974 sale.

Because the LPA never referred him to the property, Bataas spent a year and a half obtaining the appropriate information and arranged a meeting with Baxter and Sommers to find out if the town would object to his relocating at "Kincaid". He testified that almost immediately after the meeting, the Track (Monmouth Park) bought it:

> A.."They (the mayor and council) said it didn't seem bad to them.. The next thing I know(the property) it's gone.."
> Q. Somebody else bought it?.."
> A.. and somebody in that office.. that I was sitting in, is what I was trying to get to before, told the race track I was going to buy it..One of the Township Fathers, who are very near and dear to that race track, and the race track paid more than I offered.."
> (Record A713, A714, A686, A687)

Defendants offered in evidence a March 25, 1975 letter from Leone to Piet where Leone asserted he had previously mentioned Kincaid.##/ He admitted federal information required (costs, square feet)

##/ The letter, coming three months after its sale to the Track, was completely self-serving and Pietroniro testified it was a lie.

was not provided to Piet. Due to petitioners' lack of knowledge upon the availability of tne Kincaid tract, the petitioners made numerous attempts to secure a parcel in the Ratti renewal area, located around commercial uses and under defendants' control.

Defendants refused to release any Ratti parcels for sale options to petitioners. At the same time, they extended preferential purchase options on one residential lot to similarly displaced professional commercial operators, subject to them obtaining a commercial variance for development. To facilitate the variance, over which defendants had final approval, defendants gave this select class certain recommendations as a catalyst for variance concurrence to the

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12/ Ratti parcels remain vacant and undeveloped to date. The failure of defendants to refer "Kincaid" and the "Ratti" area violated 42 USC 4625, 24 CFR 42.115. These statuttes require maximum assistance be rendered to assist displacees in obtaining a suitable replacement location under the 49 per cent ratio, and require information on availability and land costs over which defendants had exclusive control in the Ratti renewal area. (EMPHASIS)

Board of Adjustment as relocation assistance. Said recommendations were made through the use of the relocation assistance advisory program. Such was accomplished, with the council approving the variance and bringing their own advisory service recommendations to fruition.[13]/

The LPA defendants' influence went full circle. Quite simply, petitioners were entitled to the same and not disparate relocation assistance advisory service and similar purchase options within and under Congress' national goals developmental 49 per cent commercial ratio. The conduct of the defendants in denying petitioners proper assistance has resulted in a denial of equal protection, depriving petitioners of the use, benefit and enjoyment of their license without

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[13]/ Although different members comprised the Board, the recommendations by the LPA defendants and their final approval was the catalyst for the Board's concurrence as to commercial use, facilitated through the relocation advisory program.

due process of law.

B. FEDERAL APPELLATE PROCEEDINGS

The Appeals Court's opinion turned solely on the question of whether or not petitioners were entitled to the same assistance given the professional commercial operators. The Court answered in the negative, ruling there was insufficient evidence to support the verdict, mistakenly treating "Kincaid" as a stipulated referral instead of a non-referral and violation:

> " The parties have further stipulated that Piet was referred to five alternative locations...Piet concedes it knows of no feasible alternative location to which it was not referred by the LPA, and admits that the only acceptable alternative location was a residential parcel (referring to a "Ratti" renewal parcel)..The understandable decision to allow a doctor's office rather than a bar to locate in a residential neighborhood is not an abuse of the municipality's discretion.." (App. pp. A19,A15)
>
> " Absent some evidence that the defendants did not provide Piet with assistance in obtaining an existing suitable location, there is no basis for finding that there has been a failure to provide the relocation assistance mandated under federal law.."(App. pp. A19). (EMPHASIS ADDED)

The Appeals Court has ruled, as a matter of law, that initial zoning in the renewal area overrides the statutory obligations to render maximum assistance to assist in business displacees obtaining a suitable replacement location. The decision effectively obliterates Congress' 49 per cent commercial national goals program for renewal projects. It confers "infettered discretion" upon the locality without articulating any standards for review of the municipality's actions that have been heretofore articulated by the United States Supreme Court, examined as a basis for review upon certiorari.[14/]

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[14]/ This writer believes that a referral location can be a comparable commercial one, facilitated by variances gotten through advisory assistance within and juxtaposed against the 49 per cent commercial Congressional mandates of the national goals program. Zoning is not fixed and can be modified to facilitate same as the need arises, as it was so changed to help the similarly situated professional commercial displacees. (See record testimony on page 9, 10)

If resources are available for the relocation of a select group, such operates as a direct admission that the defendants had the ability to extend the same type of relocation opportunities to petitioners, but summarily foreclosed them from same. (e.g. the opportunity to purchase a parcel and then apply for a variance under the 49 per cent program)[15]/

Subsequently, in a Petition for Rehearing In Banc, these issues were brought to the attention of the Appeals Court, which denied Rehearing without opinion on July 18, 1985.

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[15]/ This decision has detrimental ramifications affecting the entitlements of all business displacees under federal renewal projects under Congress' 49 per cent program. It is also important to note that the overwhelming weight of evidence at trial demonstrated that the "Ratti" renewal area was not residentially predominated. It was surrounded by commercial uses, such as a corner gas station allowed to remain through variance, the professional commercial operators allowed to operate through variance and it was 200 yards from commercial property housing the Turf Bar, built on the Arnold Property in 1978 after the wetlands moratorium was lifted.

REASONS FOR GRANTING THE WRIT

The Third Circuit's opinion has created a conflict in the Circuits, has adversely affected Congress' national goals program and the Third Circuit has failed to utilize Supreme Court standards, deciding a federal question under federal laws in conflict with its decisions. The Supreme Court should now settle and decide the important questions of federal law under the Housing Act and Uniform Relocation Assistance Act presented herein on behalf of all business displacees.

The constitutional rights implicated in this case are petitioner's due process and equal protection rights to be accorded similar assistance under national goals as that given the professional commercial displacees under the 49 per cent ratio. Both are in the same class, similarly displaced, needing the opportunity to purchase a renewal parcel to relocate within the 49 per cent ratio. District and Circuit Court decisions construing same have recognized this principle

and conflict with the Third Circuit's interpretation.[16] In Home Furniture v. HUD, 324 F. Supp. 1401 at 1404 (D.C. N. Car. 1971), where there were not enough relocation sites for business displacees unless defendants made land under their control available to them within the 49 per cent ratio, the Court imposed this upon the locality as an affirmative obligation to discharge statutory responsibilities:[17]

> "..(That defendants)..must allow businesses, singly or in groups,to relocate and return to the redevelopment area (renewal area) as one of the live options to discharge their statutory responsibilities.." (within the 49 per cent commercial context) Home Furniture v. HUD, 324 F. Supp. at 1404 (D.C.N.Car. 1971)

Furthermore, in M. Crockin Co. v. Portsmouth Redevelopment Authority, 437 F.2d. 789, (4th Cir. 1971), a business displacee desiring to buy a renewal parcel was allowed to

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[16] The federal relocation statutes must be read in conjunction with Congress' national goals program so that they are given their full statutory intent and effect.

[17] The municipality's desire for open space is not jeopardized since national goals only prescribe commercial redevelopment within a maximum of 49 per cent of the renewal area.

contest the municipality's proposed use of the parcel in question for parking, used to preclude Plaintiff's purchase.[18/] The Fourth Circuit, conflicting with the Third Circuit opinion in this case, did not rule, as a matter of law, that the municipality has "unfettered discretion" to bar Plaintiff's purchase overtures just because defendant's proposed uses on the parcel were consistent with the parcel's initial zoning.[19/] The Crockin Court concentrated upon the appropriateness of the use as a question of fact measured and juxtaposed against Congress' 49 per cent national goals program for commercial redevelopment. The Third Circuit opinion conflicts because it states, as a matter of law that all uses incompatible with initial zoning are unjustified and need not be

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[18/] The Plaintiff could contest the defendants' proposed use for parking even though same was consistent with the parcel's zoning, as a question of fact. The Fourth Circuit did not treat initial zoning as solely indicative of appropriateness of use, conflicting with the Third Circuit.

considered in evaluating an authority's relocation plan. This negates national goals and defendants' statutory responsibilities to update referrals, render maximum assistance and gauge the effectiveness of the program. It also conflicts with other decisions in the Circuits wherein the question of suitableness or unsuitableness of relocation referrals are matters of fact, not law.[20]/ Had the Crockin Court adopted the Third Circuit's reasoning, the Crockin plaintiff would have been defeated as a matter of law because the defendant's proposed parking use for the parcel in question was consistent with initial zoning and use designations as the one and only overriding concern in the analysis by Third Cir-

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[19]/ The Third Circuit specifically ruled, as law, that the municipality's estimations of use appropriateness governed the defendants' statutory referral obligations, directing conflicting with Crockin's interpretations.

[20]/ Decisions include: Smith v. Mo. State Highway Com., 488 S.W. 2d. 230 (Mo. 1972); Tullock v. Mo. State Highway Com., 507 F. 2d. 712 (6th Cir. 1974).

cuit standards. The Fourth Circuit stated:

> "In light of ..allegations plaintiff needed certain assistance..the defendants recognized and had ability to grant..alleging that only a particular area of land was feasible for relocation..Plaintiffs were allowed to contest this..to show defendants did not comply with statutes governing the services they used to carry out their statutory obligations..".
> 437 F.2d. 789 (4th Cir. 1971)

The opinion of the Third Circuit also indicates the legality of the relocation plan should be considered in light of whether or not defendants had the ability to grant the assistance under Crockin.(App. pp.A16). The opinion then erroneously indicated that only the Adjustment Board could grant the assistance for variances.[21]/

[21]/ Trial testimony and variance documentation showed defendants did have the ability to aid as: (1) the body granting final variance approval for commercial use after Adjustment Board concurrence; and (2) the body having control over renewal land release in the first instance, using the relocation advisory program to make commercial recommendations to the Adjustment Board as the catalyst to elicit its concurrence upon commercial use on renewal parcels.(Pietroniro testimony at A741-744). Piet should have been permitted a purchase contract on a lot subject to obtaining a variance like the professional commercial operators got.

Defendants have the duty to render maximum assistance to suitable replacement locations:[22]/

> "..Where defendants submitted applications to "HUD" for funding, including that they would advise and assist commercial tenants in relocation matters and insure their satisfactory relocation, defendants' obligations were not discharged by the mere writing in of these broad relocation committments.. their obligation was to also satisfactorily perform this undertaking, for without proper execution, the statutes fail to achieve their purpose..". 437 F.2d. 789 (4th Cir. 1971),Crockin, supra.

Most signifigantly, the Third Circuit opinion conflicts with Battison v. Niles, 445 F. Supp. 1080 (D.C.N. Ohio 1977). In Battison,a displaced liquor licensee,after submitting development plans, was denied a purchase option on a commercial relocation parcel due to defendants' improper

[22]/Defendants contended at trial that "comparability" was not a consideration in referral location sites,directly violating 42 USC 4625, 24 CFR 42.115 wherein defendants are to render maximum assistance for the business to obtain a suitable replacement site with a minimum of delay and loss of earnings.Testimony of Sylvain at(A2503-A2505).Piet should have been referred to "Kincaid" in the advisory program.

pecuniary motives. The Battison Plaintiffs were then also referred to economically infeasible sites while preferences for relocation were extended to other select commercial operators.[23]/ Such amounted to a denial of proper relocation services:

> "..Where the council's refusal to relocate was prompted by political motives rather than the proper legislative concerns..where conditions imposed on owners made it economically infeasible for them to relocate..and where council extended preferences to some that it did not extend to other business displacees, council denied owners effective relocation assistance..".445 F. Supp. 1080 (D.C.N. Ohio 1977)

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[23]/ Defendant Sylvain told Pietroniro not to submit plans on renewal parcels because the defendants refused to offer a parcel for sale to petitioners in the first instance. These refusals effectively precluded any further relocation steps. Piet, denied a sale option under the 49 per cent commercial ratio, suffered disparate treatment as compared with the assistance given the professional operators within the 49 percent commercial operation ratio. Battison principles hold true, no matter whether defendants release parcels under sale option designated as commercial or residential, subject to the obtaining of a variance as the select group's purchase option was structured. Piet should have been extended a similarly structured purchase option for maximum relocation assistance that defendants had ability to grant.

The Third Circuit's departure from decisional consistency is one basis warranting review upon certiorari.

Additionally, the Third Circuit has failed to articulate standards for its conclusion that, as a matter of law, preferential advisory assistance is permissable within the locality's unfettered discretion to allow professional commercial displacees to relocate in the renewal area under the 49 per cent ratio and not petitioners. (App. pp. A17)[24/] The Supreme Court has articulated certain standards for review that are deleted from the opinion, to-wit:

> (a) Has there been uniform operation or arbitrary non-adherence to national goals ratios initiated by Congress?

[24/] The United States Supreme Court has ruled that legislative considerations lie within the relevant scope of constitutional limitation. There is no plenary power of the locality to manipulate in every conceivable way for every conceivable purpose. Gomillion v. Lightfoot, 364 U.S. 339, 344-345, 81 S. Ct. 125, 128 (1960); Garren v. City of Winston-Salem, 463 F.2d. 54 (4th Cir. 1972) The 49 per cent commercial ratio developmental standard is not discussed in the opinion in relation to the defendants' statutory obligations.

(b) Have there been arbitrary selections for commercial and non-commercial uses?

(c) Have there been applications of the advisory assistance statutes by defendants which produce indefinite, uncertain or unnecessary interference with the vested interests of the licensees to carry on their lawful business or use and enjoy their licenses, which is not warranted in the public interest?

Daly v. Elton, 195 U.S. 242, 25 S. Ct. 22; Dobbins v. Los Angeles, 195 U.S. 223, 25 S. Ct. 18; Reinman v. Little Rock, 237 U.S. 171, 35 S. Ct. 511. 25/

The analysis is whether or not the defendants' failures to extend purchase options to petitioners on a renewal parcel, and whether their failure to refer the "Kincaid" tract under federal law are mere excuses for unjust discrimination, oppression and spoliation of members of the commercial displacee class, namely, the licensees, whose licenses gave them no options but to relocate within Oceanport's boundaries.

25/ The Supreme Court tests encompass whether or not the licensees were denied equal protection and due process as compared with the great and preferential assistance given to others similarly situated. Reinman, above; Elmwood Properties v. Conzelman, 418 F.2d. 1025 (7th Cir. 1969).

Failing to adhere to Circuit and Supreme Court standards, the Third Circuit has decided a federal question in conflict therewith. The Supreme Court should now decide these important questions of federal law under Congress' national goals program and the federal relocation acts.

Another consideration to be noted is petitioners own a liquor license they could not relocate because defendants:

(a) refused to offer renewal land under their control for purchase subject to the obtaining of a variance under the 49 per cent commercial ratio; and

(b) failed to properly refer the "Kincaid" property, a comparable commercial replacement location, thus violating 42 USC 4625 (c), 24 CFR 42.105, 42.115.

Decisions indicate that an existing vested license interest represents a fundamental property interest to pursue the calling of one's choice, protected under the Fourteenth Amendment's due process

guarantees. Eisen v. Eastmen, 421 F.2d. 567 (2d Cir. 1969); Glicker v. Michigan Liquor Control Commission, 160 F.2d. 96 (6th Cir. 1969); Hornsby v. Allen, 326 F.2d. 605 (5th Cir. 1969); Shamie v. Pontiac, 620 F.2d. 118, (6th Cir. 1980); Bell v. Burson, 402 U.S.535, (1971).

The defendants' failures to accord equal measures of relocation assistance to displacees have denied petitioners their licensee rights without due process of law. The petitioner's loss of license use and signifigant gainful employment opportunities through statutory failures of the municipality under federal law have resulted in a loss of liberty and property to petitioners.[26]/

[26]/ Prior decisions in the Circuits indicate displacees have causes of action for denials of equal protection and personal rights if federal statutes providing for proper relocation services are being breached. Barnes v. Tarrytown Urban Renewal Agency, 388 F. Supp. 275 (D.C.N.Y. 1971); English v. Town of Huntington, 335 F. Supp. 1369 (D.C.N.Y. 1970); Ka-Haar v. Huck, 345 F. Supp. 54 (D.C.Wisc. 1972); Board of Regents v. Roth, 408 U.S. 564 (1972); Paul v. Davis, 424 U.S. 693(1976).

CONCLUSION

The United States Supreme Court is urged to review and settle the important questions of federal law presented within this Petition under the Uniform Relocation Assistance Act of 1972, the Housing Act of 1949 and the national goals program established by Congress on behalf of all business displacees under federally funded programs in this country.

In the interests of justice, and for all of the foregoing reasons presented herein, it is respectfully submitted that a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Third Circuit.

RESPECTFULLY SUBMITTED,
FRANK PIETRONIRO,Pres.,
MARY PIETRONIRO,
PIET CORPORATION
Petitioners

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APPENDIX

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United States Court of Appeals
for the Third Circuit

No. 83-5926

Frank Pietroniro, Vice-Pres., Mary Pietroniro, President, Piet Corporation

Appellees

v.

Borough of Oceanport, Clement Sommers, Elwood Baxter, Louis Sylvain, George Barrett, Nicholas Leone

Appellants

v.

US Department of Housing and Urban Development

On Appeal from the US District Court for the District of New Jersey

No. 79-1836-1840

Opinion on Appeal filed on June 18, 1985.

OPINION OF THE THIRD CIRCUIT

A. LEON HIGGINBOTHAM JR. Circuit Judge:

Piet Corporation ("Piet"), a N.J. corporation, brought this action for damages, and declaratory and injunctive relief under 42 USC 1983 (1982) against the Borough of Oceanport ("Oceanport") NJ and certain public officials who were administering Oceanport's urban renewal program.[1] / Piet, through its sole shareholders and corporate officers-Frank and Mary Pietroniro-charged that the defendants illegally deprived them of property by their failure to provide effective relocation assistance as required by the Housing Act of 1949, 42 USC 1455 (c)(1) (1982), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972, 42 USC 4625 and the applicable federal regulations 24 CFR 42.1 et.seq. (1971). A jury rendered a verdict for the Plaintiffs for $197,950.00.

1/ Third party defendant, US Department of Housing and Ubran Development was granted summary judgment on March 30, 1981 and is not a party to this appeal.

The district court entered judgment and denied the defendants' motions for judgment notwithstanding the verdict and alternate motion for new trial. Despite the complexity and novelty of the issues in this case, the district court filed no opinion, either oral or written, to explain the basis for his denial of the post-trial motions. Because we find, as a matter of law, the evidence was insufficient to support the conclusion that Piet was denied relocation assistance as required by law, we now reverse the judgment of the district court.

I.

Piet Corporation owned and operated a combination package store, bar and tenement business (consisting of three apartments) in Oceanport, NJ from July 1961 until July of 1975. The Piet property was located in the downtown business district which in 1972 was a blighted area that consisted of several small businesses, a few gas stations and abandoned properties.

Defendant Elwood Baxter became Mayor of Oceanport in 1972 and the Oceanport Council then included defendants George Barrett and Clement Sommers. Sommers became a Councilman in 1960 and remained a Councilman until January 1, 1976, when he replaced Baxter as Mayor. Barrett served as Councilman until 1978. The offices of Mayor and Councilman were part-time positions paying a salary of $250 per year.

Beginning in February 1972, the Council held public hearings concerning urban renewal proposals. Frank Pietroniro attended at least one such hearing on Behalf of Piet. The Borough of Oceanport approved an urban renewal plan in June, 1972 and in September the program received Department of Housing and Urban Development approval ("HUD") and bacame operational under the Neighborhood Development Program, Project No. NJA-15.

The Mayor and Council served as the Local Public Agency ("LPA") for the admin-

istration of the Neighborhood Development Program ("NDP") Baxter, as Mayor, served as the initial Chairman and Barrett and Sommers served as members. Baxter had no vote at Council meetings except in the event of a tie. As chairman of the LPA he did have a vote.

The LPA delegated the day-to-day administration of the Oceanport NDP to the "Oceanport Redevelopment Agency", which later became the "Oceanport Office of Community Development". On October, 1972, the LPA hired defendant Louis Sylvain as Executive Director of the Redevelopment Agency; he served in that capacity until May 1980. The defendant Nicholas Leone was hired in April 1973 as Relocation Officer and shortly thereafter was made Assistant Director. In 1976, Leone ceased his involvement in the program. HUD monitored the program.

The urban renewal plan called for the demolition of several properties, including Piet's. Eighteen businesses and

forty residences were displaced. The former business district was rezoned for residential use. Negotiations between the Borough and Piet over the removal and relocation of the business began in 1973 and have been the source of much controversy and hostility among the parties. Since the implementation of the NDP, there have been disputes over the adequacy of the compensation offered for Piet's real property, allegations of official harrasment, conspiracy and unethical conduct, and charges that the relocation assistance provided by the Borough as required by federal law was a "sham" designed to obscure the machinations of sinister political plots.

At the time of its eviction on July 2, 1975, Piet had received from Oceanport $95,885.13 in displacement payments, including a $58,225.00 (plus interest) award for the land and building as determined by a judgment in state court con-

demnation proceedings. Piet did not receive compensation for the value of its liquor license or the licensing fee, but was allowed to retain the license in order to relocate the business, or, in the alternative, sell it to a suitable party. [2]/

II.

A claim for damages resulting from the destruction of a business is an appropriate action under 42 USC 1983. Where a party seeks to compel compliance with conditions set forth in a federal statute, however, we must first determine whether the statute at issue provides for a private cause of action to compel state compliance with those conditions, or whether the appropriate remedy is an action by the federal government to terminate funds provided to the state under the act. Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 27-28 (1981)

Piet cites four sources of Federal law

[2]/ Piet owned a "Broad C" liquor license. Broad C licenses are the most valuable class of liquor license in NJ because it allows the licensee to sell both over-the-counter

as conferring upon it certain interests that are rights protected by 42 USC 1983: the Housing Act of 1949, 42 USC 1455 (c) (1) [3]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA"), 42 USC 4625 [4]; HUD regulations 24 CFR 42.

---

drinks and package goods. Piet's expert testified at trial that this license is currently worth $100,000.00 if a suitable location can be found. In the ten years since its eviction, Piet has neither relocated nor sold the license and continues to pay a yearly licensing fee to the State of NJ. Although a 1978 law passed by the State of NJ automatically retires dormant licenses after one year, Piet has successfully enjoined enforcement of this statute pending final disposition of this case.

3/ 42 USC 1455 (c) (1) provides in pertinent part:

> "There shall be established..for each urban renewal project involving the displacement of individuals, families and business concerns occupying property in the urban renewal area, a relocation assistance advisory program which shall include such measures, facilities and services as may be necessary and appropriate in order (A) to determine the needs of such individuals, families and business concerns for relocation assistance; (B) to provide information and assistance to aid in relocation and otherwise minimize the hardships of displacement..and (C) to assure the necessary coordination of relocation activities and other planned or proposed governmental actions in the community which may affect the carrying out of the relocation program....

100, 42.105, 42.115 (1971); and the HUD Relocation Handbook. These require municipalities which receive federal subsidies for urban renewal projects to provide a relocation assistance program for businesses displaced by the project.

> (3) Within one year after (the date of enactment of this paragraph) Dec. 24, 1969, and every two years thereafter, the Secretary shall review each locality's relocation plan under this subsection and its effectiveness in carrying out such a plan."

42 USC 4630 similarly requires:

> Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract with or agreement with, a State Agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person.. unless he receives satisfactory assurances from such State Agency that--
>
> (2) relocation assistance programs offering the services described (in 42 USC 4625) shall be provided to such displaced persons.

42 USC 4625 provides in pertinent part:

> (c) Each relocation assistance advisory program shall include such measures, facilities or services as may be necessary or appropriate in order to--(1) determine the need, if any, of displaced persons for relocation assistance;
> (2) provide current and continuing information on the availability, prices and rentals..of comparable commercial properties and locations for displaced business;

This regulatory scheme does not, however, provide a mechanism by which the federal administrative authority charged with enforcing these conditions on the state--HUD--can appropriately investigate and respond to the claims raised by persons in Piet's position. The grievance and appeals procedure set out in 24 CFR 42.190 (1971) provides only for HUD reconsideration of state agency determinations as to relocation payments under the regulations. In the abscence of a comprehensive enforcement scheme within the regulatory scheme which encompasses the plaintiff's complaint, there exists a private cause of action against state officials for violations of the Housing Act and the URA. Maine v. Thib-

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(4) assist a displaced person displaced from his business.. in obtaining and becoming established in a suitable replacement location;
(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

5/ See 42 USC 1455 and 42 USC 4625, in notes 3-4 supra.

outot, 448 U.S. 1 (1980). See also Middlesex County Sewerage Authority v. National Sea Clammers, 453 U.S. 1, 19-21 (1981).

Nor is the claim barred by a failure by plaintiffs to exhaust federal administrative remedies. Where administrative channels are inadequate to resolve issues which are not within the expertise of courts, a party is not required to exhaust administrative review. 4 K. Davis, Administrative Law Treatise, 26.11 (1983). So long as HUD approves the program established by the LPA, there is no procedure designed to redress allegations that the program is being administered improperly. Indeed, in response to Piet's complaints in this case, the director of HUD's Community Planning Development Division denied Piet's request for a hearing on the issue of relocation assistance because the amount of relocation payments was not in dispute, and the LPA had assured HUD that it had provided maximum assistance in the form of referrals to realtors and possible relocation sites. There is no suggestion in the

laws or regulations that the program's administration is a matter of agency discretion nor is judicial review precluded. Where judicial review is not precluded in the first instance, the agency's actions are not discretionary and the administrative channels which exist are inadequate to resolve a complainant's grievance, a party is not required to exhaust all avenues of administrative review before bringing the matter to federal court. M.M. Crockin Co. v. Portsmouth Redevelopment Authority, 437 F.2d. 784,788,(4th Cir. 1971); Tokarcik v. Forest Hills School District, 665 F.2d. 443, 447 n.5 (3rd Cir. 1981).

III.

An inherent sequela of urban renewal is that there will not be absolute replication of what previously existed. There are some losses in the process. Our constitution requires that persons evicted from their property by the government for purposes in the public good be fully compensated for their losses. Condemnation is the usual

remedy in such cases. Relocation assistance, is a supplement and, though an important option, is not a guarantee of relocation for affected businesses. The Housing Act and the URA do not require that the government "tender" or "obtain" a replacement location; they require "only assistance" and not assistance guaranteeing a successful result." American Dry Cleaners and Laundry v. US Department of Transportation, 722 F.2d. 70, 73 (4th Cir. 1983).

To minimize hardship and assure that individuals will not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole, Congress has required that owners of real property which is acquired for federally funded or assisted renewal projects be provided certain relocation assistance.[5] To implement these objectives, HUD promulgated a series of regulations, codified at 24 CFR 42.1 et. seq. (1971)[6]

6/ The original regulations as promulgated in 1971 govern this case and all displacements occurring before 1979. Except where noted, all subsequent citations to HUD regulations

The regulations require that states receiving federal funds for urban renewal develop and implement a relocation assistance advisory program which provides "maximum assistance, to minimize the hardships of displacement". 24 CFR 42.105. Among other things, these regulations established the minimum requirements of relocation assistance advisory programs. 24 CFR 42.115.All property owners are not, however, entitled to the same assistance. Resident displacees are assured that "within a reasonable period of time prior to displacement, there will be available adequate replacement housing.. equal in number to the number of and available to, such eligible persons who will be displaced.."24 CFR 42.115(d)(emphasis added) Displaced business concerns are not guaranteed a replacement site. The public agency is obligated to do no more than "provide current and continuing information on the availability..of comparable commercial

are to the 1971 versions. The updated regulations, codified in 1979, do not apply to pre-1979 displacements. See 24 CFR 42.3 (1979).

properties and locations" and to "assist any such eligible person displaced from his business.. in obtaining and becoming established in a suitable replacement location". 24 CFR 42.115 (c) and (e) [7]/.

The district court accurately and exhaustively instructed the jury on the law regarding effective relocation assistance. The question before us is "whether, as a matter of law, the record is critically deficient of that minimum quantum of evidence from which a jury might reasonably afford relief." Patzig v. O'Neil, 577 F. 2d. 841, 846 (3d Cir. 1978) After a careful review of the record, viewed in the light most favorable to the plaintiffs, we conclude that the evidence was insufficient to support the jury's verdict. [8]/ It is not

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7/ See also 42.105 which states:
"State agencies shall develop and implement a relocation assistance advisory program which satisfies the requirement of 42.115 and of title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968. Such programs shall be administered so as to provide advisory services which offer

disputed that Oceanport implemented a relocation plan, including an advisory assistance program, that was approved and monitored by HUD. The parties have further stipulated that Piet was referred to five alternative locations and several local realtors by the LPA in their attempts to relocate the business. Conceding, as it must,

> maximum assistance, to minimize the hardships of displacement, and to assure that (a) all persons displaced from their dwellings are relocated into housing meeting the criteria described in 42.120, and (b) all persons displaced from their places of business or farm operations are assisted in reestablishing with a minimum of delay and loss of earnings. (Emphasis added) These requirements are reiterated in a Relocation Handbook published by HUD in 1971 which also contains guideforms designed to facilitate compliance with the federal regulations.

8/ Piet sought to recover for diminished value of the liquor license, license fees paid, lost profits, and for personal injury (an ulcer) suffered by Frank Pietroniro. As all of the damages were allegedly caused by breach of the statutory duty to provide relocation assistance, and no other statutory or common law causes of action are advanced, the entire verdict depends on the finding of a breach of the statutory duty.

9/ Piet calculates "economic feasibility" by weighing the necessary investment against the anticipated revenues from operating a taproom and package store on the site.

that as a comercial displacees it was not guaranteed a replacement property under federal law, Piet nevertheless contends that the LPA failed to provide the "maximum assistance" required by 42.105. This claim is based on two somewhat intertwined theories.

In the first instance Piet asserts that none of the locations to which it was referred by the LPA was economically feasible.[9/] In fact, Piet believes that there is only one feasible alternative location in Oceanport, namely the so-called "Ratti Tract" which lies virtually across the street from Piet's former location. The virtues of the Ratti Tract in Piet's view are that it is initially affordable and favorably situated so as to provide a volume of business that will make the new venture economically feasible. The only stumbling block to a satisfactory resolution of Piet's problem is the undisputed fact that the Ratti Tract has been zoned

for residential use and Piet has been advised that the Oceanport Board of Adjustment would refuse to grant a commercial variance to accommodate Piet's liquor license.

We agree that a displaced business should be given an opportunity to establish that the public authority has failed to comply with both the federal regulations and its own relocation plan when it refuses to make available the only parcel of land allegedly feasible for the relocation of a business. M.M. Crockin Co. v. Portsmouth Redevelopment and Housing Authority, supra. As Crockin noted, the legality of the relocation program in this type of case should be considered in light of whether the public authority had the ability to grant the assistance requested; whether the proposed use for the site comports with the use for which the parcel is designated in the urban renewal plan; and whether the authority's proposed use is

compatible with that plan.

Piet's claim fails under these criteria. Since Piet's proposed use was incompatible with the use for which the Ratti Tract was designated, the LPA cannot be faulted for failing to refer Piet to that location. Moreover, it is undisputed that Piet was well aware of the unavailability of the Ratti Tract, and had been so informed by the LPA, which also informed Piet that it was unlikely a liquor license could be relocated on the site because of the zoning restrictions. In addition, the LPA was powerless to provide Piet with any more assistance. Only the Oceanport Board of Adjustment could grant the zoning variance necessary for Piet to relocate on

10/ The Oceanport Board of Adjustment was an independent entity which was not subservient to the LPA. During the time relevant to this case, the two bodies shared no common members and no member of the Board of Adjustment is an individual defendant here.

the Ratti Tract.[10] Finally, Piet relies on the fact that the ultimate purchasers of a parcel on the Ratti Tract, two doctors who had also been displaced by the urban renewal project, were granted a commercial variance in order to erect a commercial building for the site on which they located their offices.[11] While we agree that Piet was entitled to the same considerations with regard to relocation assistance as any other commercial displacee, we cannot impute any discrimination made by the zoning board to the LPA. Moreover, it is well within the discretion of the municipal zoning board to grant a variance that allows doctor's offices to be relocated in a residential area, and not a bar and liquor store. In these

11/ Since Piet did not bid for the Ratti Tract parcel sold to the doctors, it could not apply for a variance. Thus, it never applied for and was thus never denied a commercial variance for the Ratti Tract. In effect, Piet alleges here that its desire to purchase the property was chilled because municipal officials made it known that a variance would not be granted for the liquor license.

circumstances, we do not believe that the jury could reasonably find that failure to refer Piet to the Ratti Tract amounted to a failure to provide relocation assistance required by law.

Piet's second theory presents us with a somewhat closer case. It is alleged that the defendants acted in bad faith in the administration of the urban renewal program. There is evidence that indicates that during 1972 public hearings Mayor Baxter and others misrepresented to those in attendance that the urban renewal plan contemplated allowing certain existing businesses to remain in the redeveloped zone. There is further testimony that Piet was the target of official harrassment during its eviction proceedings and that the LPA and Office of Community Development violated various HUD regulations in the administration of the relocation plan. Additionally, there is evidence that several of the

sites to which Piet was referred for relocation were clearly incompatible with his needs. For example, two sites were located on tidal lands that regularly flooded and which could not be filled due to a statewide moratorium prohibiting the filling of waterfront properties. Most troublesome, however, is the evidence that some of the defendants may have used their positions of public trust for provate advantage. In 1980 Mayor Sommers purchased an inactive liquor license from the Monmouth Park Jockey Club. It is alleged that he was able to negotiate a bargain purchase price because there were several inactive liquor licenses in Oceanport, including Piet's, which were soon to be retired under NJ law if not put in active use. Thus it is alleged that Sommers directly benefitted from Piet's failure to relocate. There is other testimony that defendant Leone and defendant Barrett, who was in the real

estate business, proposed that Piet sell his license at a deflated price to one of Barrett's clients.

The thrust of these accusations is that the defendants' actions with regard to Piet were prompted by private and political motives that made it impossible for Piet to receive adequate relocation assistance. While we recognize that there have been cases in which it was found that effective relocation assistance was not provided where public officials acted pursuant to political motivations rather than the proper legislative concern, see Battison v. City of Niles, 445 F. Supp. 1080 (D.C.N.Ohio 1977), this case lacks the necessary causal nexus between the defendants' conduct and the plaintiffs' damage. Most signifigantly, Piet concedes it knows of no feasible alternative location in Oceanport to which it was not

referred by the LPA, and admits that the only acceptable location was a residential parcel. As we stated earlier, the understandable decision to allow a doctor's office rather than a bar to locate in a residential neighborhood is not an abuse of the municipality's discretion. Absent some evidence that the defendants did not provide Piet with assistance in obtaining an existing suitable location, there is no basis for finding there has been a failure to provide the relocation assistance mandated by federal law. See American Dry Cleaners and Laundry v. US Department of Transportation, 722 F.2d. at 72-73.

CONCLUSION

Because we find that the evidence is insufficient to support the jury's verdict, the judgment of the district court will be vacated with directions to enter a judgment in favor of appel-

lants, Each party to bear its own costs.

A True Copy:

Teste:

Clerk of the US Court of Appeals
for the Third Circuit

United States Court of Appeals
for the Third Circuit
Docket No. 83-5926

Frank Pietroniro,
Mary Pietroniro,
Piet Corporation

Plaintiffs-
Respondents

v.

Borough of Oceanport,
Clement Sommers, Elwood
Baxter, Louis Sylvain,
George Barrett, Nicholas
Leone

Defendants-
Appellants

Petition for Panel Rehearing
With Suggestion for Rehearing
In Banc

On Appeal from the US District
Court for the District of
New Jersey

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Statement of Jurisdiction

Jurisdiction is conferred upon this Court pursuant to 28 USC 1331, 1343, and 42 USC 1985.

Statement of Issues Presented on Rehearing On Appeal

A statement of issues presented on the appeal in this case is set forth in my initial appellate brief.

The issue presented on this rehearing is whether there was a causal connection between the defendants' wrongdoing and plaintiffs' injury. This is more specifically stated as two alternative issues:

1. Whether defendants' wrongful failure to refer plaintiff to the Kincaid Property prior to its sale on November 29, 1974 caused Plaintiffs' injury by denying him an opportunity to relocate there, and/or:

2. Whether defendants' misrepresentations caused plaintiffs' injury by en-

abling the defendants to secure approval and funding for its redevelopment program.

Statement of the Case

This appeal was heard by a three-judge panel. This is a request for a panel rehearing with suggestion for rehearing in banc. The appeal was from a judgment entered on November 28, 1983 in the US District Court of NJ in favor of Piet Corp and Mr. Frank Pietroniro, pursuant to a jury award rendered on Oct. 17, 1983. The three-judge panel, after the initial hearing, in an opinion filed June 18, 1985, reversed said judgment.

Statement of the Facts

A comprehensive statement of facts is set forth in my initial appellate brief. The essential facts are as repeated below.

In 1972, the Borough of Oceanport("Oceanport") applied for funding from the US Department of Housing and Urban Development ("HUD") for a redevelopment project. To obtain the approval of HUD and Oceanport's townspeople, defendants made fraudulent promises to relocate businesses displaced by the project. Under 42 USC 1455, defendants became obligated to make site referrals to comparable locations and to provide maximum assistance to displaced businesses. 42 USC 1455, 4625, 24 CFR 42.105, 115. (A290 (A2903-2906, A2244).

Plaintiff Piet Corp. ("Piet") operated a bar and was served with

Oceanport's notice of acquisition of its real property on August 23, 1973. (A260) The bar was managed by plaintiff Frank Pietroniro and disbursed its profits to him each year. (A987-988, A727, A990-991, A1844).

Defendants intentionally failed to fulfill their promise to assist in relocation and wrongfully failed to provide appropriate relocation assistance. In addition, they engaged in a series of acts which maliciously injured the plaintiffs, causing them financial and physical injury.

STANDARD OR SCOPE OF REVIEW

The standard or scope of review is essentially reflected in the "argument" section of this petition, which sets forth the overlooked or misapprehended facts. In essence, the plaintiff argues that the three-judge panel misunderstood certain facts and that there is sufficient evidence to support the jury verdict.

Argument--Summary

This case should be reheard because confusion at oral argument, possibly because of Plaintiff's counsel's nervousness in her first appearance in a Federal Circuit Court, as well as the fact that she was representing her parents' corporation, gave the erroneous belief that the plaintiff had conceded the deciding question of fact.

The issue is whether there was comparable property within the Borough of Oceanport to which the Plaintiff should have been referred. The panel expressly stated, at page 15, that the plaintiff conceded that there was no such comparable property and, therefore, concluded that as a matter of law there was no causal link between the defendants' wrongdoing and plaintiff's injury. In fact, however, the plaintiff argues that <u>there was</u> such comparable property but only <u>during 1973-1974</u> and that the defendants wrongfully

failed to refer it to the Plaintiff. The comparable property was the "Kincaid" Property, which was discussed by at least nine different trial witnesses. Defendants admitted the property was both comparable and available. Testimony and exhibits regarding this property permeate the entire trial record and transcript, appearing on over forty (40) pages.

At oral argument, plaintiff focused on the specific argument that, after the end of 1974, there was no available comparable property and that the defendants were statutorily required to provide such a site. The panel disagreed. However, because of the limited focus of counsel's statements, the panel never addressed the defendants' wrongful failure to refer the Kincaid Property in 1973-1974, which was well documented at trial. Plaintiff's counsel's inability to articulate her position more clearly

at argument should not be permitted to reverse a unanimous jury verdict based on first-hand observation of the witnesses and relevant evidence.

Another reason why this should be reheard is that there was a second causal link. Explicit evidence in the record demonstrates that the defendants lied about their intentions at the statutorily required public hearings on the relocation program and in developing their master plan. Were it not for this fraud, it may well have been impossible for the defendants to have obtained technical approval from the US Department of Housing and Urban Development or political approval from the townspeople of Oceanport. This is not a case where defendants changed their minds after the making of good faith promises.

Because a rehearing is needed only because of confusion at oral argument,

no new authorities are cited. I have instead attempted only to clarify the operative facts.

Point One
Defendants Wrongfully Failed To Refer Plaintiff to the Kincaid Property

In its decision, the three-judge panel noted that there was evidence that the defendants acted in bad faith in the relocation program, that they lied to the public, saying that certain businesses would be allowed to remain in the redeveloped zone, that they harrassed the plaintiff during eviction proceedings, that they suggested relocation sites which were obviously incompatible with the Plaintiffs' needs, that defendant Sommers purchased a liquor license for himself at bargain prices because of the existence of inactive licenses, such as Piet's, and that other defendants tried to convince Piet to sell its inactive license at a deflated price.

Nonetheless, because of counsel's confusion, the panel believed that the Plaintiffs had conceded that there was no feasible alternative location and ruled that there was no proximate cause as a matter of law.

Yet the trial record demonstrates that the plaintiff did not concede that there was never a feasible alternative location. One site, the so-called "Kincaid" Property was an available, compatible location until November 29, 1974. Moreover, the defendants knew about this site but wrongfully failed to mention it to the plaintiff.

The defendants admitted that the Kincaid Property was zoned for commercial use. See testimony of Sommers at A2021, A2022. See also Boynton at A1645,A1648; Bataas at A687. There is absolutely no dispute as to this point.

Moreover, defendants' real estate

witness, Allan M. Heaslip, testified the Kincaid Property was "comparable" to the property from which the Plaintiff was evicted. (A2625) He stated that the Kincaid Property was especially valuable to Plaintiffs:

> "Remarkable aspect of it is I would presume that the name, that Piet Corp would wish to maximize the name under which it operated for 15 odd years; in other words, the Colonial Jockey Room. Relocating to either one of those locations (referring in part to the Kincaid Property) would put it (Piet) closer to the track and it could have maximized what it already had going for it it; in other words, 15 years of reputation with a name associated with racing.."(A2628)

Furthermore, the defendants admitted that prior to its November 29, 1974 sale to the Monmouth Park Jockey Club, ("Monmouth Park") the Kincaid Property was available and that they knew it. See testimony of Barrett, Leone and Sylvain at A2171, A2172, A2214,A2438.

Yet the plaintiff, Frank Pietroniro testified clearly on several occasions,

that he did not know that the Kincaid Property had ever been available until it was sold, and therefore unavailable. (A1122, A864) Asked why he did not offer to buy the Kincaid Property before Monmouth Park purchased it, he answered that the reason was that he did not know it was available. (A1122) Furthermore, he repeatedly denied that defendants had ever referred the property to him before its sale to Monmouth Park. For example, at A1119, he stated:

> A."Mr. Leone (a defendant) with the Kincaid Property, never, never mentioned that and you can check your coorespondence, never mentioned the Kincaid Property as a site for me to relocate..He did, however, after it was sold.." (Emphasis Added)

Although the defendants called Leone as a witness, he admitted on cross examination that he did not recall the true chronology of events. (A2208, A2209) The defendants then offered in evidence a letter from Leone to Pietroniro dated March 25, 1975 in which Leone asserted that

he had previously mentioned the Kincaid Property. That letter, coming three months after the sale of the property, was purely self-serving. Pietroniro testified that it was a lie. (A1220) In any event, the letter itself admitted that the Kincaid Property was not "thoroughly discussed" with the plaintiff. Moreover, Leone admitted that he did not provide the plaintiff with the information that he was required to provide under the law, such as costs, square footage and comparability. (A2202, A2203, A2204) This information was required in coordination with the 1973-1974 real property acquisition of Piet, because it is necessary in order for a relocating business to effectively consider a new site. (A423, A406, A2903, A2906, A2908, A2909, A2910, A2911). The Leone testimony is, in essence, really only an additional admission that the Kincaid Property was comparable.

The other suggestion at trial, that defendant Sylvain mentioned the Kincaid Property to Pietroniro prior to its sale is controverted not only by Pietroniro's testimony, but also by the fact that Sylvain himself never says he told Piet anything about the property. In fact, on two occasions, Sylvain lists the properties he mentioned to Pietroniro and conspicuously fails to list the Kincaid Property (A2262-A2264, A2348). Yet Sylvain admits that he knew about the Kincaid Property before its November 29, 1974 sale, and, in fact, had talked to William R. Bataas about it. Nor does the Kincaid Property come up in any of the many letters from Leone or Sylvain to Pietroniro, entered in the record as Exhibits prior to the time the Property was sold.

As further evidence of the defendants' failure to provide information

about the Kincaid Property, the Plaintiff produced the devastating and credible testimony of Bataas, who came all the way from Ohio to tell his story. Bataas, like the Plaintiff, had an active liquor license prior to the redevelopment. Unlike the Plaintiff, however, Bataas knew about the Kincaid Property. Because the LPA never referred him to the property, Bataas spent about a year and a half obtaining the appropriate information. He then arranged a meeting with the defendants Baxter and Sommers, as well as another member of the town council, to find out if the town would object to his relocating to that property. He testified that almost immediately after the meeting, Monmouth Park bought the property:

> A. "They (the mayor and town councilmen) said it didn't seem bad to them. The next thing I know it's (the property's) gone."
> Q. "Somebody else bought it?"
> A. "It's gone.."
> Q."...."
> A. "..and somebody in that office

> that I was sitting in, is what I was trying to get to before, told the race track I was going to buy it. One of the Township Fathers who are very dear and near to that race track and the race track paid.. more than I offered.." (A713, A714, A686, A687)

Monmouth Park, it should be noted, was at the time indebted to the defendants because the relocation program permitted the construction of a roadway leading to and benefitting its racetrack. The inference of collusion between the defendants and Monmouth Park could surely have been reasonably drawn by the jury.

In light of the defendants' many inconsistencies, contradictions and lapses of memory--and in light of the demeanor evidence--the jury could surely have reasonably found that the defendants, although they knew about the availability of the Kincade Property before its sale to Monmouth Park, never told the plaintiff about it. Had the Plaintiff been told, it could have purchased the prop-

erty and relocated.

Point Two
Defendants' Purposeful Misrepresentations Caused Plaintiffs' Injury

The trial record is replete with evidence that the defendants lied throughout the preliminary stages of the relocation program.

Businesses were told that they could relocate. They were specifically told that they could move into the commercial zone indicated on the "master plan". The defendants encouraged businesses to believe that Monmouth Park which owned almost all of that area, was going to build a shopping center into which they could relocate and that other business relocation would be possible. (A2071, A1482)

But defendant Sommers admitted on cross-examination that he knew as early as the 1960s, or at least by 1972, that Monmouth Park was not going to build a shopping center on its property. (A2035,

A2036, A2082,A2083)

At a 1972 public hearing, in response to questioning by many businessmen, a HUD representative made the following pledge:

> "Before any business is taken.. the plan has to show that there is a place for that business to go, otherwise we cannot approve the plan.. The relocation plan has to demonstrate the relocation resources for both businesses and residences will be available at such and such date.." (A2080)

The defendants present at that meeting, by their conduct, adopted this representation. In doing so, they committed a fraud on HUD and the Plaintiffs. They knew that, if Monmouth Park did not construct a shopping center, there would be no place for the displaced businesses to go. They wrongfully led HUD and the Plaintiffs to believe that the shopping center would be built, although they knew that Monmouth Park had no intention to construct it.

The defendants also promised that businesses would not be "hurt" (A1525),

that the master plan was being revised to provide more commercial sites,(A1481) that substantial assistance would be given to businesses (A1555), that rezoning would be undertaken to facilitate relocation (A1538-A1540), implying that 49 per cent of the property would be zoned for commercial use (A2080), and that certain property would be made available to businesses which had been forced to relocate (A1490-A1492).

The defendants failed to fulfill any of these promises. As one witness responded when asked how defendants had tried to help him, "Only thing they tried to do was help me out of town. None of the LPA members tried to help me at all." (A1520)

Defendants, through their planner, specifically represented that the master plan contained a written provision:

> "to the effect that existing businessmen in an area in and around the intersection of Oceanport Ave. (which would have included the plaintiffs) would be allowed to remain as long as they serve the existing

> neighborhood. Particularly, I suppose this would mean Fort Monmouth, such as the bars (which would have included plaintiffs) and the gas stations and so forth." (A1538-A1540)

But none of those bars were permitted to remain. Evidence in the record as to defendants' subsequent actions makes it abundantly clear that these representations were fraudulently made to secure the approval of HUD and Oceanport townspeople. Without these approvals, the federally-funded program could not have been instituted and plaintiff would not have been injured.

This was not a case where the defendants changed their minds after the making of good faith promises.

Conclusion

After six weeks of trial, a unanimous jury rendered its verdict against each of the defendants. Because of counsel's confusion at oral argument, this panel mistakenly believed that plaintiff had conceded the decisive

fact issue. In reality, it was the defendants who had admitted that the Kincaid Property, prior to 1975, had been an available, comparable relocation site.

Second, defendants made fraudulent misrepresentations which were essential in enabling them to implement the relocation program which injured the plaintiffs.

For these reasons, this panel should reinstate the jury verdict in this case.

Respectfully Submitted,

Dated: July 1, 1985.

/s/ Cynthia P. Liebling
Cynthia P. Liebling

Certification of Counsel

This appeal involves a question of exceptional importance, to-wit:

Defendants' acts have wrongfully deprived plaintiffs of their liquor license, thereby violating their fundamental and personal rights under the Fifth and Fourteenth Amendments to the US Constitution to pursue the calling of their choice.

Dated: July 1, 1985.

/s/ Cynthia P. Liebling
Cynthia P. Liebling

Certification of Bar Membership

I hereby certify that, pursuant to Local Rule 9(1), I am duly admitted to practice before the Third Circuit Court of Appeals.

Dated: July 1, 1985.

/s/ Cynthia P. Liebling
Cynthia P. Liebling

Certification of Service

I hereby certify that on this 1st day of July, 1985, I did cause to be delivered to the Court by courier an original and eleven copies of the Plaintiff's Petition for a Rehearing.

I further certify that on this 1st day of July, 1985, I did mail, via Express Mail three copies of Plaintiff's petition to counsel for the Defendants Connell, Foley & Geiser, Att: John F. neary Esq., Theodore F. Geiser Esq., and two copies to counsel for the Plaintiff, Joseph F. Mattice Esq.

Dated: July 1, 1985.

/s/ Cynthia P. Liebling
Cynthia P. Liebling

Sur Petition for Rehearing

ORDER

Present: Aldisert, Chief Judge; Seitz, Adams, Gibbons, Hunter, Weis, Garth, Higginbotham, Sloviter, Becker, Stapleton, Mansmann, Circuit Judges, and Giles, District Judge.

The Petition for Rehearing filed by Frank Pietroniro, appellee in the above entitled case, having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

Dated: July 18, 1985.

/s/ A. Leon Higginbotham
Circuit Judge

QUESTIONS TO BE ANSWERED BY THE JURY

RE: FRANK PIETRONIRO, et. al. v. Boro of Oceanport, et. als., No. 79-1836

1. Do you find from a preponderance of the believable evidence that the plaintiff Piet Corp. received all the relocation assistance to which it was entitled under applicable law?

Yes___ No x

(If your answer to this question is "Yes", please cease your deliberations and return your verdict to the Court. If your answer is "No", please proceed to answer the following questions.)

2. Do you find from a preponderance of the believable evidence that the actions or inactions of one or more of the defendants was a proximate cause of Piet Corp's failure to receive all the relocation assistance to which it was entitled? If so, indicate which of the defendants:

	Yes	No
Boro of Oceanport	X	
Louis Sylvain	X	
Nicholas Leone	X	
George Barrett	X	
Clement Sommers	X	
Elwood Baxter	X	

3. As to any individual defendant to which your answer to Question #2 is "Yes": Do you find by a preponderance of the believable evidence that that defendant acted in bad faith, that is, that he knew or should have known that his actions or inaction denied Piet Corp. relocation assistance to which that plaintiff was entitled?

	Yes	No
Louis Sylvain	X	
Nicholas Leone	X	
George Barrett	X	
Elwood Baxter	X	
Clement Sommers	X	

4. If your answer to Question #2 is "Yes" as to the defendant Boro of Ocean-

port, what damages, if any, has the plaintiff Piet Corp. established were proximately caused by that defendant's failure to render Piet Corp. all the relocation assistance to which it was entitled?

$ 94,950.00

5. As to any individual defendant to which your answers to both Questions #2 and #3 is "yes", what damages, if any, has plaintiff Piet Corp. established were proximately caused by that defendant's failure in bad faith to render Piet Corp. all the relocation assistance to which it was entitled?

Louis Sylvain	$ 5,000
Nicholas Leone	$ 5,000
George Barrett	$ 10,000
Clement Sommers	$ 40,000
Elwood Baxter	$ 30,000

6. What is the total sum of money which

you award to plaintiff Piet Corp. because it failed to receive all the relocation assistance to which it was entitled?

$ 184,950.00

7. What damages for physical and/or emotional injuries, if any, has Frank Pietroniro established were proximately caused by the failure of the defendant Boro of Oceanport to render, or the failure in bad faith of any individual defendant to render relocation assistance to which Piet Corp. was entitled?

Boro of Oceanport	$ 3,000
Louis Sylvain	$ 2,000
Nicholas Leone	$ 2,000
George Barrett	$ 2,000
Clement Sommers	$ 2,000
Elwood Baxter	$ 2,000

8. What is the total sum of money which you award to Frank Pietroniro for his physical and/or emotional injuries?

$13,000

Supreme Court,
FILE
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JOSEPH F. SPANIO
CLERK

NO. 85-622

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

FRANK PIETRONIRO, Vice-President, MARY PIETRONIRO, President and PIET CORPORATION,
Petitioners,

vs.

BOROUGH OF OCEANPORT, CLEMENT SOMMERS, ELWOOD BAXTER, LOUIS SYLVAIN, GEORGE BARRETT and NICHOLAS LEONE,
Respondents.

BRIEF AND APPENDIX OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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BEST AVAILABLE COPY

Statement of Questions Presented for Review

Contrary to the "Questions Presented" of the petitioners, there is no equal protection issue, conflict in the circuits, conflict with the opinions of this Court or important questions of federal law raised by the petitioners' petition.

The only question presented by the petitioners' petition is as follows:

> Is it appropriate for this Court to review a decision of the United States Court of Appeals for the Third Circuit which ruled against the petitioners on the sole basis that the trial record did not support the petitioners' own theory of the case?

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NO. 85-622

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

FRANK PIETRONIRO, Vice-President, MARY PIETRONIRO, President and PIET CORPORATION,
Petitioners,

vs.

BOROUGH OF OCEANPORT, CLEMENT SOMMERS, ELWOOD BAXTER, LOUIS SYLVAIN, GEORGE BARRETT and NICHOLAS LEONE,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Respondents respectfully pray that the petition of the Piet Corporation ("Piet Corp.") and Frank Pietroniro ("Pietroniro") for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit be denied.

Opinion Below

The opinion of the Third Circuit dated June 18, 1985 reversing the jury verdict against respondents and its Order of July 18, 1985 denying petitioners' petition for a rehearing are included in the appendix to petitioners' petition.

Constitutional Provisions, Statutes and Regulations Invoked

The petitioners have cited: the Fourteenth Amendment; 42 U.S.C. §1983; The Housing Act of 1949, 42 U.S.C. §1455 (c)(1); The Uniform Relocation Assistance Act of 1972, 42 U.S.C. §§4601 & 4623; 24 C.F.R. 42.105; and HUD regulations 1320.1 and 1371.1. These references by petitioners have been quoted in the petition. In respondents' view, the issue raised is simply whether the review of this matter is appropriate in light of the fact that this dispute is merely one as to whether the trial record supported the petitioners' own legal theories.

Statement of the Case

The petitioners filed an action under 42 U.S.C. §1983 alleging that they had not received proper relocation advisory assistance in connection with the displacement, under Oceanport's urban renewal program, of a tavern owned by the Piet Corp. The petitioners argued that the Piet Corp. should have been allowed to relocate on a vacant piece of property known as the "Ratti tract" located across from the Piet Corp.'s tavern and *zoned residential.* To buttress their claim, the petitioners asserted that the Ratti tract was the only feasible relocation site. After a jury trial, a verdict was returned awarding the Piet Corp. $184,950.00 and awarding Frank Pietroniro ("Pietroniro") $13,000.00 for an ulcer allegedly sustained due to an inability to relocate the Piet Corp. tavern; Pietroniro is a stockholder, officer and employee of the Piet Corp. The respondents appealed to the Third Circuit Court of Appeals

and the judgment was reversed because, "as a matter of law, the evidence was insufficient to support the conclusion that Piet was denied relocation assistance as required by law. . . ." (Pa2) The decision of the Third Circuit represents nothing more than a finding that the petitioners failed to prove their case.

The Circuit Court noted that petitioners argued two theories of liability: (1) The Piet Corp. was not referred to the only affordable relocation site, the Ratti tract and (2) the respondents acted in bad faith in the administration of the Oceanport urban renewal program. As to the first theory, the Circuit Court noted that the petitioners' argument failed to recognize that the Ratti tract was zoned for residential use and properly concluded that, because the Piet Corp.'s proposed use for the Ratti tract was incompatible with the permitted use, the respondents could not be faulted for any failure to refer petitioners to such a site. (Pa18) Secondly, the Circuit Court properly observed that the Piet Corp. was well aware of the Ratti tract and the zoning problem and therefore concluded that the claim that the respondents did not bring the site to their attention is of no legal consequence. (Pa18) Thirdly, the Circuit Court correctly held that, if the petitioners wanted to secure a zoning variance for the Ratti tract, the proper procedure would have been to apply to the Oceanport Board of Adjustment, which the petitioners never did. (Pa18-19)

As to the second theory of petitioners' case, bad faith administration of the urban renewal program, the Circuit Court found that, assuming such bad faith, there was no causal nexus with the petitioners' alleged damage. (Pa22) That finding is the ineluctable consequence of the very

theory of the petitioners' case that there was no feasible relocation site other than the residentially zoned Ratti tract.

After receiving the adverse opinion of the Third Circuit, the petitioners filed a petition for rehearing (Pa25) wherein they altered their theory of the case, arguing that the Piet Corp. should have been referred to a piece of property known as the "Kinkade parcel". That petition was denied without opinion by order dated July 18, 1985. (Pa48)

Summary of Argument

It is clear that the Third Circuit opinion is founded on a finding that the proofs simply did not support the petitioners' own theory of the case and not that it disputed that theory. Undoubtedly, the petitioners dispute the Third Circuit's holding, but a writ of certiorari is completely inappropriate in the instant case. The petitioners have merely taken the criteria applicable to the requested review and, through remarkable contortion and misdirection, have sought to create the illusion that those criteria have been satisfied. The petitioners' ineffectual efforts at masking the true nature of the dispute are unavailing and serve, instead, to underscore the fact that review of this dispute is unquestionably unfounded.

The first part of a purported two-pronged equal protection argument presented by the petitioners (at pg. i of petition) is whether the doctor and dentist, who were allowed (by the Oceanport Board of Adjustment) to relocate on a portion of the Ratti tract, were afforded improperly preferential relocation advisory assistance. This is obviously a

spurious issue. There was no evidence of any such discriminatory treatment. Both the petitioners and the doctor and dentist were aware of the Ratti tract, but it was only the doctor and dentist who elected to bid on the property and apply for a variance. If the Piet Corp. had applied unsuccessfully for a variance, at least it would have some colorable basis for an argument, but that argument would be with the Oceanport Board of Adjustment, not the respondents. Further, any such claim of discrimination would have little merit given the discretion afforded the Board of Adjustment in such matters. There are, of course, perfectly valid reasons why a doctor's or dentist's office might be permited in a residential district and a tavern would not. However, that is a hypothetical matter and certainly not one that should be the subject of a writ of certiorari.

The second part of the petitioners' alleged equal protection issue (at pg. i of petition) is whether petitioners were denied equal protection in light of the "fact" that they had presented "sufficient evidence at trial" to demonstrate "a causal nexus" between inadequate relocation assistance and petitioners' alleged damage. This imaginative argument reflects the lengths to which petitioners have gone in order to induce this Court to undertake to review the decision below. This is nothing more than a thinly veiled expression of disagreement with the Third Circuit's finding that the petitioners' claim was not supported by the trial record. If this Court were to grant certiorari based on such adequacy-of-the-record arguments, the floodgates would surely be open. Fortunately and properly, such fact-based claims are not included among the criteria for granting petitions for certiorari.

The petitioners' second issue for review is based on the implausible allegation that there is a purported "conflict within the circuits" as a result of the Third Circuit's ruling. (at pg. i of petition) Due to the fact that the Third Circuit's opinion was based on its finding that the trial record did not support the petitioners' own legal theories, it is inconceivable that another circuit court could have evaluated the petitioners' trial record. Perforce, no such conflicting opinion has been, or could be, cited by the petitioners.

The petitioners' purported third and final issue is that this dispute involves "important questions of federal law" which the Third Circuit has allegedly decided contrary to opinions of this Court. As indicated heretofore, petitioners' true quarrel with the Third Circuit is on the adequacy of the evidence and not any divergent view of the law and, as a consequence, it is incontrovertible that there could be no opinion by *any* court which could reflect a view contrary to that of the Third Circuit.

Mention must be made of the petitioners' untimely argument concerning an alleged failure to refer the Piet Corp. to the "Kinkade parcel." After the Third Circuit had ruled against petitioners, they sought to switch the theory of their case and argue the contradictory proposition that the Piet Corp. should have been referred to the Kinkade parcel. The petitioners filed a motion for reconsideration based on that belated change in strategy and that application was appropriately denied. In any event, this issue, at best, is merely an adequacy-of-the-record dispute which is not the proper subject of review by this Court.

In sum, the petitioners, through an outright misrepresentation as to the nature of the Third Circuit's holding, has sought to deceive this Court into believing that said holding represents something more than a reversal of a jury verdict on the ground that it was not supported by the evidence. However, this attempted deception failed abysmally because, of course, the petitioners could cite to no conflicting opinion of another Court of Appeals or of this Court. Nor could they clearly articulate any "important questions of federal law" that are presented by the Third Circuit's opinion. The instant petition is patently frivolous, a gross imposition on this Court, and should be promptly and summarily denied.

ARGUMENT

POINT I

The only true issue presented by the pending petition is whether the opinion of the Third Circuit Court of Appeals is supported by the trial record.

Rule 17 of this Court indicates the character of disputes that would be considered on a petition for certiorari. The instant petition fails to meet any of those critera.

The holding of the Third Circuit Court of Appeals in this matter was merely that the verdict against the respondents was not supported by the evidence. That holding is not, and could not be, in conflict with a decision of another Circuit Court, this Court or any state court of last resort; nor does the opinion represent a departure from the accepted and usual course of judicial proceedings or involve an important question of federal law which should be settled by this Court or has been settled by this Court in a manner which conflicts with the Third Circuit's opinion.

The petitioners truly argue nothing more than that the Third Circuit's view of the evidence was erroneous. That argument plainly does not constitute the requisite "special and important reasons" which would warrant review by this Court. This Court's discretion to review decisions of the circuit courts by a writ of certiorari should only be exercised in matters of gravity and general importance "to avert diversity of judgments and guard

against inadvertence of conclusion in controversies involving weighty and serious matters." *In re Woods,* 143 U.S. 202, 212 (1892). In *Southern Power* v. *North Carolina Public Service Co.*, 263 U.S. 508, 509 (1923) the petitioner had "stated that the cause involved a grave question of vital importance to the public, and alleged as special reason for its re-examination that the decree would deprive Petitioner of property without due process of law and of freedom to contract, contrary to the federal Constitution. . . ." *Id.* at 509. It developed that the genuinely controverted question was whether evidence supported a finding that petitioner's property had been dedicated to public use and, for that reason, the writ was dismissed.

The petitioners have artfully sought to make it appear that the instant matter is something other than an evidence dispute and meets the critera for review by writ of certiorari. However, the issues they have articulated are illusory. As held by this Court in the *Southern Power* case, *supra,* review of a sufficiency-of-the-evidence ruling by a circuit court is inappropriate and for that reason the pending petition must be denied.

POINT II

The Third Circuit opinion does not conflict with the decision of any other Court of Appeals on the same subject matter.

Petitioners are disingenuous in their claim that there is a conflict in the circuits. It is beyond dispute that petitioners have failed to demonstrate any such conflict. Peti-

tioners cite only one circuit court opinion in support of this argument: *M.M. Crockin Co.* v. *Portsmouth Redevelopment Authority,* 437 F.2d 784 (4th Cir. 1971). The *Crockin* case involved an action to prevent HUD and a local redevelopment authority ("Authority") from conveying a certain parcel of land to anyone other than plaintiff. The plaintiff had a commercial operation consisting of a combined furniture and carpet retail business. The Authority took the portion of the premises devoted to plaintiff's carpeting business and left the portion wherein plaintiff conducted its furniture business. The condemnation proceedings were settled on the basis of a promise by the Authority that plaintiff would be allowed to acquire a piece of property known as "parcel 9-A", which was adjacent to the plaintiff's furniture store and zoned to suit plaintiff's contemplated use. In return for that promise, the plaintiff relinqunished its claim to some of the severance damages to which it was otherwise entitled. In disregard of its commitment to plaintiff, the Authority sold parcel 9-A to another. The court held that the plaintiff should have the opportunity to prove that the Authority had failed to comply with controlling regulations and the plan devised to discharge its relocation obligation.

The Third Circuit opinion in this matter did not express disagreement with the holding in the *Crockin* case, *supra.* Quite the contrary, the court below relied on the holding in *Crockin, supra,* (Pa17), and its decision is not in conflict therewith. The facts in the *Crockin* case are materially dissimilar from those in the instant case. Further, the instant case, unlike *Crockin,* involves a claim that re-

location advisory assistance was inadequate and not that the relocation plan was defective.

Although purported conflicts with district court decisions do not meet the critera for review by this Court, petitioners assert a conflict with the district court opinions in *Battison* v. *Niles,* 445 F.Supp. 1082 (N.D. Ohio 1977) and *Home Furniture Co. of Charlotte* v. *U.S.D. of HUD,* 324 F.Supp. 1401 (W.D.N.C. 1971). In the *Battison* case, the plaintiffs had been arbitrarily denied by the City Council the right to purchase a piece of property known as "parcel c" on which initially plaintiffs alone had made a development proposal which conformed with the building and zoning codes. The Council had also imposed unwarranted conditions on plaintiffs' proposal so as to make it economically impossible for plaintiffs to relocate on parcel c and failed to afford plaintiffs the relocation preference to which they, as commercial displacees, were entitled, by ultimately conveying the property to an out-of-state developer. Moreover, the *Battison* court decided the dispute based on state, not federal, law: "In reviewing the actions of the council, the court will apply those standards prescribed by state law." *Id.* at 1091. There is no reported opinion of the Sixth Circuit Court of Appeals adopting the holding in the *Battison* case.

The Third Circuit opinion below considered the holding in *Battison, supra,* and did not express any disagreement with it. The two cases are manifestly dissimilar. In the instant case, the petitioners' proposed use conflicted with the permitted use for the Ratti tract and they never bid on the Ratti tract or applied for a zoning variance. Furthermore, the doctor and dentist who did relocate in a portion of the Ratti tract were also displacees.

The *Home Furniture* case, *supra,* involved a suit by certain businesses for a stay of their eviction under an urban renewal program on the ground that there were no "reasonably satisfactory relocation sites." *Id.* at 1404. Thus, the case involved a challenge to the relocation plan, not relocation advisory assistance. The court merely held that the plaintiff businesses would be allowed to remain at their present location pending a hearing on the merits.

In its opinion the Third Circuit did not even mention the *Home Furniture* case, *supra,* because the case is inapposite. The petitioners in the instant case are not challenging the relocation plan. The petitioners, on page 47 of their Third Circuit brief, characterized their claim as follows: "Pietroniro testified this case was *not* contesting the adoption of the renewal plan or zoning, but that it involved the defendants' failure to properly administer advisory assistance to comparables while they extended relocation preferences to the doctors to the Ratti tract...." (Ra6)

Petitioners now seem to interpret the *Home Furniture* case, *supra,* as standing for the proposition that a failure in a relocation plan to afford an adequate number of relocation sites for commercial displacees constitutes a failure to render appropriate relocation advisory assistance. Assuming that were the holding, which it is not, it is clearly erroneous. Moreover, the Fourth Circuit Court of Appeals specifically rejected the *Home Furniture* case, *supra,* as authority for such a legal proposition. See *Am. Dry Cleaners & Laundry* v. *U.S. Dept. of Transp.,* 722 F.2d 70 (4th Cir. 1983). In the *Americal Dry Cleaners* case, *supra,* the court stated:

> In *Home Furniture Company,* the court enjoined dispossessing the businesses involved pending the development of an effective relocation assistance program, p. 1404, apparently for the reason that there were "not enough sites in Central Charlotte to which the various businesses involved in this project could be moved." p. 1403. If the holding of the court was that the relocation assistance program was ineffective because there were not enough sites in central Charlotte to go around, then we simply disagree with that holding as applied to this case. Without attempting an analysis of the Housing Act, the statute under consideration here 42 U.S.C. §4625, has no such requirement; neither do we construe it so to have. If the holding of the court was that no effective relocation assistance program had been developed for other unstated reasons, then the case may not be necessarily inconsistent with our decision here. In any event, as *Home Furniture Company* may be read to be inconsistent with our decision in this case, it is no longer persuasive authority in this circuit.

Id. at 74. The Third Circuit opinion in the matter *sub judice* cited the *American Dry Cleaners* case, *supra,* with approval. (Pa23) Therefore, the holding below does not conflict with a holding of any Fourth Circuit Court of Appeals, but *may* conflict with a district court opinion (*Home Furniture, supra*) which issued out of the Fourth Circuit, and, if interpreted in the manner suggested by petitioners, was expressly repudiated by the Fourth Circuit Court of Appeals.

This Court has made it abundantly clear that a conflict within the circuits must be real, not imagined. In *Layne, etc., Corp.* v. *Western Well Works,* 261 U.S. 387 (1922) the petitioner claimed a conflict within the circuits and this Court, in dismissing the writ, stated:

> [The Circuits] were really in harmony and not in conflict and . . . there was no ground for our allowing the writ of certiorari to add to an already burdened docket. If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that *it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles, the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Court of Appeals.* The present case certainly comes under neither head.

Id. at 392-393. (Emphasis added)

In the instant dispute, the Third Circuit's opinion was based solely on the failure of the trial record to support the petitioners' claim of inadequate relocation advisory assistance, the opinion does not conflict with any opinion of another Circuit Court of Appeals and, perforce, the pending petition must be denied.

POINT III

The Third Circuit opinion does not conflict with any decision of this Court.

In their statement of "Questions Presented", the petitioners assert that the Third Circuit opinion in this matter "conflicts with applicable Supreme Court decisions." On page 19 of their petition that assertion is softened to an allegation that "the Third Circuit has failed to utilize Supreme Court standards. . . ." However, a review of the petition reveals no discrete conflict with any ruling of this Court. It is true that the petitioners generally allege a denial of due process and equal protection, but those allegations are based upon a *factual* disagreement with the Court of Appeals, rather than any clash between the Third Circuit's and this Court's views of the law. The petitioners have cited no specific legal proposition found in the Third Circuit opinion which is alleged to have contradicted any ruling of this Court. It is noteworthy in this regard that, in their unsuccessful petition for rehearing (Pa25), the petitioners did not cite a single case decided by this Court. The argument then advanced by the petitioners was completely factual. They attempted to convince the Third Circuit, not that its opinion was legally infirm or in conflict with the opinions of other courts, but that it was mistaken as to the facts. The petitioners are factually in error, but whether or not that is so, is of no consequence because such a factual dispute is not the proper subject of review by this Court.

POINT IV

The petitioner's belated argument of inadequate relocation advisory assistance in connection with the Kinkade property was properly rejected by the Court below and, if it was not, that matter is not the proper subject for review by this Court.

In her closing arguments before the jury, counsel for the petitioners did not once mention the Kinkade parcel, which at all times was privately owned. (Ra12) In the answering brief filed by the petitioners in connection with the Third Circuit appeal in this matter, the theory of petitioners' case was that the Ratti tract was the only comparable and feasible relocation site for the Piet Corp. tavern. On page 15 of their brief they stated: "Pietroniro and Boynton testified that this [the Ratti tract] was the only *comparable* and feasible area for relocation akin to Piet's old location." (Ra5-6) Similarly, on page 49 of petitioners' Third Circuit brief, they argued: ". . . defendants [were] denied referrals to the only comparable parcels in the Ratti Tract." (Ra 6) In the course of oral argument before the Third Circuit, counsel for the petitioners was questioned by the court on this precise point and acknowledged that it was the petitioners' then contention that the Ratti tract was the only feasible relocation site:

> The Court: So that when we are talking about referrals, there was nothing which the municipality could have done to give you comparable property other than the Ratti property.
>
> That's your bottom line, isn't it?

Ms. Liebling: That is correct. The other property referrals were absolutely unfeasible.

The Court: I'm not talking about what they were referred to but there was no property in the area so far as the record shows that would have been comparable—

Ms. Liebling: Not doing an analysis of cost return and location.

The Court: Okay.

(Ra4) The Third Circuit's opinion reflects that Court's recognition of the then theory of the petitioners' case: ". . . Piet believes that there is only one feasible alternative location in Oceanport, namely the so-called 'Ratti tract' which lies virtually across the street from Piet's former location." (Pa16)

After the petitioners had lost the appeal, they filed their unsuccessful petition for rehearing wherein they sought to change the theory of their case so as to circumvent the reasoning of the Court of Appeals. (Pa25)

Assuming that an argument for relocation advisory assistance were timely made with respect to the Kinkade parcel the record palpably does not support such argument. Indeed, the petitioners have recklessly distorted the record. On August 7, 1974 the respondent Leone referred, by letter, the Piet Corp. to five separate realtors who had indicated they would assist the Piet Corp. in its relocation efforts. (Ra26) The Kinkade parcel was sold to the Monmouth County Jockey Club on November 29, 1974 (Ra31),

long before Piet Corp. was displaced (July, 1975). Contrary to petitioners' current assertions, the Kinkade parcel was mentioned by the respondents to the petitioners as a possible relocation site prior to its being sold. (Ra10-11) In fact, Petroniro knew *in 1973* that another displacee (William F. Bataas) was thinking of buying the Kinkade parcel. The following was the testimony of petitioners' witness, Joseph C. Boynton:

> Q. Back in 1973, were yon familiar with the Kincaid property?
>
> A. No, sir, I was not.
>
> Q. You know where it is?
>
> A. Yes, sir, I do.
>
> Q. Did you ever look into it?
>
> A. No, sir.
>
> Q. Did you ever make a determination as to whether it was available in 1973?
>
> A. Mr. Sylvain told me it was available.
>
> Q. Beyond Mr. Sylvain telling you in 1973 that the Kincaid property was available, did you do any independent investigation on your own to help your friend, Mr. Pietroniro?
>
> A. No, because Mr. Sylvain told me at that time Mr. Pietroniro and Mr. Bataas were thinking in fact of probably buying the property.
>
> • • • •
>
> Q. Because of your concern for your good friend, Mr. Pietroniro, did you go to him and say: Are you considering buying the Kincaid property?
>
> A. Yes, I did.
>
> Q. What did he say to you?

A. At that time he told me he thought Mr. Bataas was going to buy the property.

Q. In 1973?

A. I believe so.

(Ra11) Pietroniro admitted that he knew that Mr. Bataas was negotiating for the purchase of the Kinkade parcel prior to its sale to Monmouth Park:

> . . . Mr. Leone had mentioned the Kincaid property. He said *before it was sold,* but what Mr. Leone and Mr. Bataas were doing with the Mayor and Council were trying to negotiate a deal so Mr. Bataas could buy the Kincade property. However, with the Kincaid property, Monmouth Park heard that it was for sale.

(Ra7)

* * * *

Q. Were you aware of the Kincaid site before it was sold?

A. I heard there was a lot of litigation because an old man had died or whatever and it was not for sale.

Q. Who told you that?

A. I just can't recall. I know that they tried to get that house down before it was an eye sore, but there was—when I—when that property became available I would say—I would think the bar across the street started negotiating on it.

Q. When did it become available?

A. I would say around 1974, the latter part.

Q. And you yourself didn't start negotiating for it at that point?

A. No.

(Ra8-9)

On March 25, 1975 the respondent Leone confirmed by letter to Pietroniro that "the Kinkade property was mentioned as a possibility prior to its recent sale . . ." (Ra30)

The petitioners deny that the Piet Corp. was referred to the Kinkade parcel for possible relocation until after it was sold in November, 1974. Assuming that were the fact, which it is not, the petitioners were nonetheless independently aware of the Kinkade property prior to its eviction in July of 1975. Moreover, the petitioners could have approached the new owner of the Kinkade parcel and made an offer to purchase, but they never expressed any interest in the Kinkade parcel and, irrefutably, made no offer to purchase the property. (Ra9) The Piet Corp. was willing to relocate on only one piece of property: the Ratti tract.

This dispute, as with the others raised by the instant petition, seeks to draw this Court, improperly, into a controversy which has no significance beyond this particular case, involves mere questions of fact and is ill-suited for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully urged by the respondents that the United States Supreme Court deny the pending petition for a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

JOHN F. NEARY
CONNELL, FOLEY & GEISER
Counsel for Respondents
Gateway I, Suite 1600
Newark, New Jersey 07102

Dated: November 14, 1985

Certification

The undersigned duly certifies that he is counsel of record for the Respondents and a member in good standing of the Bar of the United States Supreme Court.

JOHN F. NEARY

[APPENDIX FOLLOWS]

APPENDIX

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal before the Third Circuit Court of Appeals

UNITED STATES COURT OF APPEALS
IN THE THIRD CIRCUIT

NO. 83-5926

FRANK PIETRONIRO,ETC., ET AL.,

VS.

BOROUGH OF OCEANPORT, NEW JERSEY ET AL.

VS.

UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ETC.

(D.C. Civil No. 79-1836)

FRANK PIETRONIRO, ET AL.

VS.

GEORGE BARRETT

(D.C. Civil No. 79-1837)

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

FRANK PIETRONIRO, ET AL.

VS.

CLEMENT V. SOMMERS

(D.C. Civil No. 79-1838)

FRANK PIETRONIRO, ET AL.

VS.

ELWOOD L. BAXTER
(D.C. Civil No. 79-1839)

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(2)* NO. 83-5926

CONTINUED

FRANK PIETRONIRO, ET AL.

VS.

NICHOLAS LEONE

(D.C. Civil No. 79-1840)

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* Figures in parentheses refer to each new page of the Stenographic Transcript.

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

Hearing held in the above-captioned matter at the United State Court house, 601 Market Street, Philadelphia, Pennsylvania on March 19, 1985, taken stenographically from an audio tape-recording of the above-captioned hearing by Geraldine Coppola, Registered Professional Reporter, there being present.

BEFORE:

COLLINS J. SEITZ, Circuit Judge
A. LEON HIGGINBOTHAM, Circuit Judge
JAMES T. GILES, District Judge

APPEARANCES:

THEODORE W. GEISER
Counsel for the Appellants

CYNTHIA LIEBLING
Counsel for the Appellees

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(39) * * *

The Court: Now, getting to my next question, outside of the park or the Rattie tract—out of the Rattie tract, what evidence is there in this record that within this borough there were comparable properties available?

Excerpts From Transcript of Oral Argument on March 19, 1985 of Appeal Before the Third Circuit Court of Appeals

Ms. Liebling: That was the whole problem. The Rattie property were—was the NDP land, the comparables that should have been disposed of. There was no way on this commercial zone to relocate because the property wasn't available for sale. What you have—

The Court: So that when we are talking about referrals, there was nothing which the municipality could have done to give you comparable property other than the Rattie property.

That's your bottom line; isn't it?

Ms. Liebling: That is correct. The other property referrals were absolutely unfeasible and they weren't really—

The Court: I'm not talking about what they were referred to but there was no property in the area so far as the record shows that would have been comparable—

(40) Ms. Liebling: Not doing an analysis of cost return and location.

The Court: Okay.

* * *

Excerpts From Petitioners' Answering Brief Filed With the Third Circuit Court of Appeals

(Page 13)

* * *

THE KINCADE PROPERTY

The Kincade Property abutted Monmouth Park's property and sold for $23,000 to the Track in November, 1974. (A2170a-A2172a) Mr. Pietroniro was not aware it was available until after this sale to the Track, since he knew Mr. Bataas, the other displaced licensee, was negotiating on it. (A864a, A1614a, A1119a, A1221a, A686a, A687a, A713a, A714a) Mr. Pietroniro testified that he received a letter from defendant Leone March 25, 1975, which stated that the Kincade Property had been referred before the sale to the Track, which Piet characterized as "a lie". (A437a) Leone was also the one that suggested Piet relocate and move the business in the Stalder Property shacks, which Plaintiffs' experts testified was *infeasible*. (A326a, A324a, A325a, A1398a, A1402a, A1421a). The Monmouth Park zone and Kincade Property was *never available* after 1974 for sale, contrary to appellants' contentions. (A1403a, A1409a, A2441a)

* * *

(Page 15)

* * *

THE RATTI TRACT

Pietroniro and Boynton testified that this was the only *comparable* and feasible area for relocation akin to Piet's

old location. It was high, dry vacant land, owned by the Boro, acquired in NDP across from Piet's old location, close to its old source of customers. Rebuilding costs, at a minimum, were estimated at *$75,000* to replace Piet's bar *and apartment business, unlike Teicher's.* It was located around commercial uses. (A1680a, A1681a, A1735a, A1698a, A1340a-A1350a, A1264a, A1297a, A1298a, • • •

(Pages 47-48)

• • •

Pietroniro testified his case was *not* contesting the adoption of the renewal plan or zoning, but that it involved the defendants' failures to properly administer advisory assistance to comparables while they extended relocation preferences to the doctors to the Ratti tract, who were other similarly situated commercial displacees. . . .

• • •

(Page 49)

• • •

• • • Piet answered Sylvain's letters and protested RATTI TRACT denials and defendants' bad faith acts. (A497a, A498a, A1926a-A1933a) For all intent and purposes, the letters suggesting relocation alternatives with Pietneidas were as all of the LPA letters, deviod of substance, embracing suggestions which just "looked good" in this "paper" program, being deviod of substance, while defendants denied referrals to the only comparable parcels in the RATTI TRACT. • • •

Excerpts From Trial Transcript

• • •

(Frank Pietroniro's Testimony)

(2.144). • • •

A. Well, I received a letter after, after the Kincaid property was purchased by Monmouth Park. I received a letter from Mr. Sylvain that he had mentioned the Kincaid property to me just before it was sold.

Now, what Mr. Sylvain—I am sorry, Mr. Leone, I am sorry, Mr. Leone had mentioned the Kincaid property. He said before it was sold, but what Mr. Leone and Mr. Bataas were doing with the Mayor and council were trying to negotiate a deal so Mr. Bataas could buy the Kincaid property. However, with the Kincaid property, Monmouth Park heard that it was for sale.

• • •

(Frank Pietroniro's Testimony)

(4.82) • • •

Q. Did you make any effort at all to inquire of the owner of the Kincaid property, A, whether it was for sale and, B if so, what the asking price was?

I think that calls for a yes or no, your Honor.

The Court: If he can answer it yes or no.

A. Mr. Leone with the Kincaid property never, never mentioned that and you can check your correspondence, never mentioned the Kincaid property as a site for me to relocate. He did, however, after the property was sold and the reason he never mentioned it to me—

Q. I don't want speculation here.

---

* Figures in parentheses refer to each new page of the stenographic transcript.

Excerpts From Trial Transcript

He did however after the property was sold—go on.

A. He did after the property was sold.

Q. Did you go to the then owner and inquire whether you could acquire that property or so much of it as you might require for relocation? A. No, sir.

• • •

(Frank Pietroniro's Testimony)

(4.84) • • •

Q. You didn't know that the site was available before it was sold to Monmouth Park? A. No, sir.

Q. Deposition of December 11, 1979, page 88, lines 1 through 14, and I will wait a moment, your Honor.

Mr. Kelley: Your Honor please, if it would speed things up, I would be happy to let Mrs. Liebling use my copy of the deposition.

The Court: Thank you. I am sure she would appreciate that.

Ms. Liebling: What?

Mr. Geiser: Lines 1 through 14.

Ms. Liebling: 1 through 14.

By Mr. Geiser:

Q. At that time, Mr. Pietroniro, we asked you, reading:

"Question: Were you aware of the Kincaid site before it was sold?

"Answer: I heard there was a lot of litigation because an old man had died or whatever and it was not for sale.

"Question: Who told you that?

"Answer: I just can't recall. I know that they

tried to get that house knocked down because it was an (4.85) eye sore, but there was—when I—when that property became available I would say— I would think the bar across the street started negotiating on it.

"Question: When did it become available?

"Answer: I would say around 1974, the latter part.

"Question: And you yourself didn't start negotiating for it at that point?

"Answer: No."

Q. First of all, who was the bar across the street? A. That was Mr. Bataas.

Q. So did you then know that Bataas was negotiating with respect to the Kincaid property? A. Yes, sir.

Q. So you knew about its availability before it was sold to Monmouth Park, didn't you? A. No. sir. I knew he had been negotiating on it after it had been sold. He had negotiated on it and then it was sold and I found out about it after from Councilman Delera.

Q. In any event you at no time made any effort to acquire the Kincaid property, did you? A. I didn't know it was available.

Q. I guess in a sense, don't you think everything is available? A. If you got the money I guess everything is

. . . .

* * *

(Frank Pietroniro's Testimony)

(5.144) * * *

When I asked him about the liquor stock there, he said that I am not entitled to any liquor stock or I can move

it, take it away with me. He also lied when he wrote the letter about me being informed about the Kincaid property, which I wasn't, because at that time they were dickering or negotiating with Bataas and his attorney and Baxter and Sommers, and the rest of them, to relocate Bataas' license there.

* * *

(Testimony of Clement Sommers)

(36) * * *

A. Yes, I can. This is, this indicates the right side of the photograph, the 6-story Senior Citizens' complex.

Q. What does it indicate to the left of the 6-story Senior Citizens' complex? A. It represents vacant land which is owned by the Monmouth Park Jockey Club.

Q. Prior to the Monomuth Park Jockey Club, who was the owner, if you know? A. Kincaid.

Q. Is that the same Kincaid property that was available for sale in late 1974? A. It was.

Q. To your knowledge, was Mr. Pietroneo referred to that parcel or aware of it? A. Yes.

Q. To your knowledge, did Mr. Pietronero ever make an offer to purchase that parcel? A. Not to my knowledge.

Q. Is it in the commercial zone, sir? A. It is.

* * *

(The Testimony of Nicholas Leone)

(165) * * *

Q. Kincaid was mentioned to Mr. Pietronero before it was sold? A. Yes.

* * *

Excerpts From Trial Transcript

(Testimony of Joseph C. Boynton)

(7.205) • • •

Q. Back in 1973, were you familar with the Kincaid property? A. No, sir, I was not.

Q. You know where it is? A. Yes, sir, I do.

Q. Did you ever look into it? A. No, sir.

Q. Did you ever make a determination as to whether it was available in 1973? A. Mr. Sylvain told me it was available.

Q. Beyond Mr. Sylvain telling you in 1973 that the Kincaid property was available, did you do any independent investigation on your own to help your friend, Mr. Pietroniro A. No, because Mr. Sylvain told me at that time Mr. Pietroniro and Mr. Bataas were thinking in fact of probably buying the property.

(The record is read back by the Court Reporter.)

Q. Because of your concern for your good friend, (7.206) Mr. Pietroniro, did you go to him and say: Are you considering buying the Kincaid property? A. Yes, I did.

Q. What did he say to you? A. At that time he told me he thought Mr. Bataas was going to buy the property.

Q. In 1973? A. I believe so.

• • •

Closing Arguments of Petitioners' Counsel

* * *

(16.87) * * *

(The jury entered the courtroom.)

The Court: The record will reflect you have returned to the box. Thank you for your prompt return.

We will not hear the summation of Ms. Liebling on behalf of the plaintiffs.

Ms. Liebling: Thank you for your attentiveness in this trial, and I realize that it has been many weeks, but I feel that we had a case to present which spanned over a period of about eight years.

Mr. Kelley: Your Honor, please, I really can't hear a word she is saying.

The Court: I would suggest, Ms. Liebling, if you wish to speak softly, you may do so. If you'd like to, and it would be easier, you may sit over here, Mr. Kelley, other than in the jury box, of course.

Proceed, please.

Ms. Liebling: What I would like to do is in effect go over the urban renewal project quickly and get into what the testimony reflects on what plaintiffs and defendants said.

We established in 1972 an urban renewal plan was put through in Oceanport. What happened was that the entire commercial zone was then rezoned to mostly the race

track, with (16.88) the exception of the Teischler complex or Mayor Sommers' bar is a commercial property. The business district became zoned residential with the stipulation that up to 51 percent of it had to stay that way, 49 percent, as the need arose, could have been zoned commercial to accomodate the displacement of businesses and eventual relocation which was needed after the project. That never occurred. There was never a shopping center built by Monmouth Park, and the plan was dropped.

Basically this is what happened. I contend that the plan should have been properly updated to accomodate the displaced businesses. What happened to the businesses in this project is that they could not relocate, is that they could relocate, and most of them left town. However, the liquor license holders did not have that option. Their licenses are only good in Oceanport, must be located in Oceanport. Never been established by the testimony any effort on the part of the Borough to be or to negotiate for the licenses or to render an active or effective relocation assistance to the license holders.

What happened in this case is they have been given, merely lip service.

As early as 1973-1974, the Piet Corporation advised that it was economically infeasible for relocation on the Stalder and Arnold tracts at that time due to their location, the size, and investments that had been invested. Go to the (16.89) Stalder property first. A 185,000-dollar price plus Sea Duster condominiums, over a half-million-dollar investment to get the property usable, in shape where it is now town houses. There had been no commercial development on that tract.

Closing Arguments of Petitioners' Counsel

So far as the Arnold tract, there was no building on that tract until after 1978 due to the Wetlands problems. We have been all through this in the case and had witnesses testify as to the problems on these tracts, which I contend, and I think our evidence has shown that when the infeasbility of these relocations came into the minds of these individuals, its appropriate updating plans did not occur. The individuals have testified there has been no active relocation assistance given to the corporation in the late seventies, and there really was no active and effective relocation assistance given to the license holders at all in this project.

I ask the defendant Leone on the stand about the information he had available in the office. He did not have the information required under the statute for the relocation of the bars or any other commercial displacees. I think, using common sense in this project, where have all the businesses gone? They have left town or else two of them have relocated in Mr. Teischer's complex, one with the restrictive convenant that was the D license held by Art's Liquors, and one the barber shop with also a restrictive covenant relocated. The Teischer complex was infeasible relocation site. (16.90) Piet Corporation was a landowner at the beginning of this project. In the Teischer complex substantial investment would be needed, since Mr. Teischer was going to provide only a shell. Those substantial improvements would also, according to the lease, become Mr. Teischer's property. So you have a substantial investment in the Teischer complex becomng Mr. Teischer's improvements.

Also vis-a-vis the income of Colonial Bar and to be also considered.

Now after the bar paid its expenses, $12,000 was its corporate profit. That was paid out to shareholders, Mr. and Mrs. Pietroniro. It was a closely held corporation. The apartment rentals offset its mortgage in those days before it lost its apartment rentals. The Teischer complex, the rents would have been so prohibitive the man would not have been able to pay the rent, since the rents reflected in Art's Liquors were not reflective of the rent given to other people, the estimate. Mr. Anfuso so testified that those rents which he was offered, he said it was substantially less, if you remember the testimony, then the rest of what the people were being offered at the time.

Economically it was infeasible. These tracts were economically infeasible. We have heard of the tracts many, many times. I think the crux of the situation is, ask yourselves this question, was this man treated on an equal plane with (16.91) the doctors and the dentists on Parcel 6? The answer must be no.

In my opening statement I asked you do you feel that a doctor and a dentist have more constitutional rights than any one of you. I do not feel that, and in this case we are fighting for a principle, and I would fight as hard if it happened to any one of you as I did for this man today.

Now regarding Parcel 6, Parcel 6 is the affirmative act of relocation. Parcel 6 shows that these men had the power, but accomodated only who they chose to accommodate in relocating, I contend that the license holders of the project severely needed more help than the doctors

or dentists did, because they could in no way do it, and they needed to relocate. Couldn't go out of town.

One of two options. In good faith negotiate for the licenses or relocate the people, but don't have them paying for the licenses for eight years and not be able to relocate. I can't see where the point is putting through an urban renewal project, not inviting any zone for comercial relocation and zoning all the previous commercial property entitled to a vested interest so, it is unavailable for relocation. That is what we have shown has happened.

Now, these tracts and Parcel 6, you have heard the figures. You know the disparate treatment that has been involved. I think we have pointed that out, and I think that anybody with (16.92) any common sense is going to know that the license holders have been discriminated against, and the doctors and dentists on Parcel 6 have been given preferential treatment. They had a ten-day business interruption. They were allowed to stay in their location until they built the new building and went over to Parcel 6.

When Mr. Pietroniro went to Mr. Sylvain and had an interview on the redevelopment of the parcel, he said, "You will never get that because we don't want anybody there who sells liquor."

I say to you that we have this bar a hundred yards down the road, and we have Parcel 6, and I want to know in my mind what is the justification for not relocating the bars on property they could afford so that they could build buildings and be landowners like they were before, so they wouldn't improve property for someone else, so the place would be their own and not anyone else's.

Closing Arguments of Petitioners' Counsel

You are going to be read the HUD regulations. Maybe I am talking too fast. They all speak to effective maximum statistics, and I think that if any of you people were running this program, assistance not statistics—I know I would have felt that way—you would not have let people be thrown out on the streets, because they were people. They may refer to the mas having a greasy spoon or blighted bar, but they were people. They were not pieces of dirt. And some of them, like (16.93) this man, were up in years, with no education, and had a lot of years, a lot of years tied up in their living. And to just take a man's living away from him like that says a lot about the type people that are sitting over on the other side of the room. Because I know I sure couldn't sleep at night if I knew I was doing that to anybody. That is just the way I feel about it.

I also think that anybody who is in politics or in public life should not use private information for their own benefit and interest, and I believe that that is what Mr. Sommers did. He was a member of the Planning Board, an advocate of the master plan, and testified in open court that he knew in 1972 that this race track was not going to come in and build a shopping center. Yet there has been no updating of the master plan, and the only thing that is keeping the liquor license alive today is because in 1981 I got a Federal injunction.

Mr. Keley: Object, if your Honor please.

The Court: Is there evidence in this record with regard to the court order?

Closing Arguments of Petitioners' Counsel

Mr. Kelley: I object to her saying anything, if your Honor please.

The Court: Just a minute. The objection is sustained with reference to that. That is not appropriate.

Ms. Liebling: The license today, this license has not been used since 1975, July 1, and it represents a man's life, (16.94) just like Mr. Bataas' license represented his livelihood. I feel for Mr. Bataas, because Mr. Bataas had years tied up in his business and money tied up in his business, and they never paid him for his license.

These defendants, these attorneys here would have you believe today that this license is not a part of these proceedings. It is the central part, because everything rests today on the outcome so far as this license goes. They have already gotten Mr. Bataas' license, and I contend that with the implementation of this urban renewal program their prime objective was to freeze out licenses because the sale of a liquor license in a community depends on the amount that are issued. This happens to be a Broad C, of which there is only 580 in the whole state. Now these licenses are retired, and the holders are not paid for the value for them. People who hold licenses in the town, licenses will be that much more enhanced.

I contend that they have zoned the license holders out of business, and in good faith they have not agreed to pay for the licenses, nor have they agreed to put them somewhere in a viable location. And the common sense, if you evaluate this program, there is too much that has gone on in order to get the HUD money in the first place when the race track came along and donated certain parcels of land.

Closing Arguments of Petitioners' Counsel

Now I explained some type of the funding to you before we (16.95) got started in the case. Those parcels were used. First conveyed to the Borough. Then they were used as their credit for the first-year funding to HUD. It just happens to be in the way of this new road, but, of course, the Piet Corporation bar was in the way, also. So they used the race track properties. The Borough got them. They used them as the one-fourth funding. HUD gave three-fourths, and they used the value of the properties as their credit for one-fourth share for the first year.

Without those properties this urban renewal program would not have been able to be put through, and without the urban renewal program, the Borough would have never been conferred or had conferred upon it the powers of condemnation to get these businesses out of the way of this new road. This is absolutely true, and in this newspaper it shows, if you have seen this, Monmouth Park donates property. All these properties were in the way of the road, and they were used as a funding share for HUD.

Here is Mr. Sommers, Mr. Sylvain, Mr. Kelley's partner, Mr. Wardell, and I don't know who that is, but anyway, what do we have. O.K.? We have got a program where we have some HUD money coming in now and got to get the businesses out of the way for the road.

This man was not evicted because his property was blighted. He was evicted because the road was coming through.

Closing Arguments of Petitioners' Counsel

(16.96) At the same time a little before all commercial property that was available, most of it was zoned to Monmouth Park Race Track, greatly enhancing the property value of the track. As the project proceeded—by the way, this road will eventually lead to the race track. This road here, as the program proceeded, there was no effective relocation assistance for the businesses. The businesses left town. The license holders could not leave. What happened was they wrote them all kinds of letters. He said, "I can't go to these properties here. I can't afford them. You offered me $47,000 for my building in a condemnation. You deposited the money in the court June 21 of 1974." Out of that under the statute a 43,000-dollar mortgage had to be paid. That left the man with $4,000, June 21, 1974.

Now at that point the building was under-appraised by the Borough appraiser. The man, in order to get the fair market value of his building had to go through what is called condemnation in New Jersey. In other words, he had to sue the Borough, saying, "My property is worth more than you are willing to give me." Now that went on for a year, and he was finally awarded another $11,000. However, during that time he was harassed. He was told to leave the premises. "We got a road coming through; don't want you there.

He said, "I have nowhere to go, have a liquor license. Can't throw me out on the street with my liquor license."

(1697) They said, "Well, that's enough." In effect, that is what happened.

Closing Arguments of Petitioners' Counsel

On July 1st—well, before July 1st came along, 1975, he recieved the $11,000, but by the time he got paid, got through paying his lawyers and appraisers and the sewer bill, he had almost nothing left. So then they come along July 1, 1975, and a court order is entered, saying that you must leave the premises, but you are entitled to be compensated for the months of July, August and September of 1975 for your temporary displacement, because this is only going to be a temporary displacement, and we are going to give you those three, the Borough is going to pay you those three months' income and use as the basis your income for those months in 1974. So he is evicted.

The Borough never pays an award, and what happens is they set off the rents from the damage award. Mr. Sylvain makes, the attorneys make remarks about it won't pay him to set it off from the rents. Never sued him for the rents, and under the HUD regulations that are going to be read, there is a certain procedure for an agency setoff, a judicial action for the rents had to be started 30 days after they claimed that the debt accrued in order to realistically go after the man for the rents. So the damage award has never been paid.

What was a temporary displacement has gone into nine years now. In 1979 the New Jersey State Alcholic Beverage (16.98) Commission and the Legislature put through what is called the pocket law, saying that if any liquor license is inactive, it will be killed within two years unless you show good cause.

Closing Arguments of Petitioners' Counsel

Now under that law the licenses are in jeopardy. This license particularly is in jeopardy, and I have already, you know, said to you what I had to do to keep this license alive so that we could come here today and tell you our story, but the value of this license is uncontroverted in this proceeding. They have no produced no appraisers, and they have not controverted the fact that this is a Broad C, very valuable license. And what is in isssue today is this man is entitled to be compensated for the value of his license, and he is also entitled to nine years of $550 he had been paying in order to keep that license alive.

I believe you are all fair people, and I don't believe that you would have acted in the same fashion as these men. I don't believe you would have shown the callousness that these men showed even when they testified from the witness stand. I know I wouldn't have. Maybe I have a lot to learn about the world, but I respect people's property, and I don't think that politics should be played with people's lives, and that is exactly what has been done in this case. And it is a sad case, because it was done to a man when he was old, a man who had no education, a man who had no pension or any type of security, and he was forced at the age of 55 to start his (16.99) life over. And believe me when I tell you it is hard to go out and get a job at the age of 55 with no education.

You have 14 years of his life tied up in that bar, and there is no way that I think these defendants can put a snow job on your people, to have you think that a man could go ahead for nine years, pay $550 out each year

to renew a license that he didn't want to relocate. It would make no sense, no sense in the world, and that is not what happened.

I just pray to God, you know, that they don't that they don't snow you people over, because they have given a good snow job up to now, a real good snow job.

Anyway, so far as the rental hardship goes, HUD regulations prescribe the LPA should minimize the displacement of the individual and try to soften the blows of displacement as much as they can.

In this denial of hardship, this was during the condemnation of the property, during the time he was fight ing in court for the value of the building. It says: after due consideration we found we could not reduce the rent because HUD guidlines, and therefore LPA rental policy, did not allow for reduction in rent where a business is concerned.

I want you to pay particular attention to that, because the Judge is going to read some laws which show that hardships are to be granted in cases where, you know, the project has worked a hardship on the property that are about to be (16.100) taken.

A lot of statutes on the coordination of displacement with relocation and effective maximum relocation assistance is mandated under the statutes, and you will hear the statutes.

As early as December 3, 1973, Mayor Baxter was apprised of the liquor license problem. At that time he was advised that the zoning was unfavorable. Something had

to be done with the licenses, and that the only viable alternative was to open that other property up. It never was done.

Now so far as the Old Orchard in which Mayor Baxter, spending the public money on whatever he had down there, that is uncontroverted in the record, has never been denied. Neither has the Mayor's partnership regarding the liquor license of this man. They interjected their personal business into the renewal and tried to get what they could. I really can't see where, you know, Mr. Bataas came from Ohio—nothing else that they can take away from him—he came here because he wanted to tell the story, and he was telling the truth. He had absolutely nothing to gain from coming here and testifying, except trying to help Mr. Pietroniro tell the truth. His motives you should weigh for testifying. He didn't get anything. Neither did Mr. Boynton, and believe me, Mr. Boynton is telling the truth.

Mr. Pietroniro was telling the truth. They laughed at him and tanted him and teased him, and that is what happened to (16.101) him. It is really sad. It is, but I am saying the man is entitled to the value of his license. He is entitled to the renewal fees for the nine years he has been spending in order to keep this alive. And he is entitled— they put the corporation out of business. It had 12,000-dollar a year profits. He is entitled to the profits lost which was paid as his salary. Those three things he is entitled to, but I consider it a victory just being able to tell you people what really happened down there in that town, because I feel that somebody has got to care about those businessmen. That is the way I feel;

with their greasy spoon and blighted area and everything else, there was a lot of lives tied up there and a lot of people put a lot of time, like Larino's. They were nice people, had a little Italian restaurant, and everybody just thinks these guys talk about them like they are dirt.

Oh, so basically this is what happened, and through denials of the effective relocation assistance, the corporation is entitled to those three elements of damage. But, like I said to you today, I feel like it is a victory, because it has taken us four years to stand before you people and four years of motions and paperwork, and see everything that has gone into this case, and I just feel like it is a victory because we did get to court, and we did get our story before the people. And believe me when I tell you the plaintiff has presented a truthful and factual account of what actually (16.102) happened. And believe me when I tell you people that politics was played with innocent lives in that town, and I just know that these men here, if there is a God that, you know, they will be made to account for their actions. But I hope that today you bring them to account and show them that you know this is the United States, like I said before, it is not Russia. We don't put people out on the streets. We give them what they are entitled to. You don't take away their rights without just compensation, because that is what the Fifth and Fourteenth Amendments are all about, and that is exactly what was done in Oceanport.

I want to thank you very much for your time.

Letter Dated August 7, 1974 From Nicholas Leone to Frank Pietroniro

(Exhibit DB-17)

BOROUGH OF OCEANPORT
REDEVELOPMENT AGENCY
21 MAIN STREET
OCEANPORT, N.J. 07757

August 7, 1974

Colonial Inn/Piet Corp.
Attention: Mr. F. Pietronaro
345 Oceanport Avenue
Oceanport, New Jersey 07757

Dear Mr. Petronaro,

In an effort to search out available commercial ground in Oceanport for relocation purposes we have contacted at least six realtors in the area.

We have had response from the following.

(1) Colao Agency (please see attached)

(2) Teicher Agency (" ")

(3) Bardale Realty-Mr Barc of that firm advised the Redevelopment Agency that he intended to speak with you. Have you anything to add to this.

(4) Marie Cox Agency

(5) A. Fred Maffeo Agency

Leter Dated August 7, 1974 From Nicholas Leone to Frank Pietroniro

We'd like to discuss this matter with you therefore please feel free to call the office if there are any questions.

Very truly yours,

NICHOLAS A. LEONE
Asst. Executive Director

NAL:SVW

Letter Dated March 25, 1975 From Nicholas Leone to Frank Pietroniro

(Exhibit DB-95)

(Seal)

BOROUGH OF OCEANPORT
Office of Community Development
21 Main Street, Oceanport, N.J. 07757
(201) 544-1440

March 25, 1975

Mr. Frank Pietronaro
Piet Corporation
349 Oceanport Avenue
Oceanport, N.J. 07757

Dear Mr. Pietronaro,

A review of the Relocation Status of the Colonial Inn Bar and Package Goods Store indicates that the following efforts and referrals were made to you by the LPA and Staff.

1. The relocation needs of the Piet Corp. were discussed with at least five (5) real estate firms and that representatives of some of them spoke with you on this matter.

2. Verbal reference has often been made to you by LPA members and staff about the Monmouth Park Jockey Club's proposed Shopping Center/ apartment complex. This possibility was discussed with you and Mr. Resnikoff, by the LPA and staff on February 20, 1975. At that meeting the Mayor's

Letter Dated March 25, 1975 From Nicholas Leone to Frank Petroniro

offer to act as liaison to the Jockey Club was accepted and is currently pending. Also at that meeting Mr. Resnikoff said that because of the major investment involved, your review of Teicher's complex and the Stalder property were economically infeasible as relocation sites but that the area directly across the road from the present location is the only feasible site.

3. The LPA has often referred the Stalder property namely Block 77D, Lot 1 and the Teicher complex to you and again refers them to you for investigation since they are still available. Should you choose to pursue the purchase of either parcel, the Agency will assist you in any way that it is able.

4. The LPA has also advised you to engage a real estate firm to assist in searching for a relocation site and that certain costs incurred by the firm in assisting you could be borne by the LPA. However, it is necessary that advance notice of your selection be given to the LPA office.

5. In a meeting with Mr. Sylvain and I on October 30, 1974 you advised us that after giving thought to the Stalder property and Teicher's commercial complex, you do not feel it is economically feasible to locate at either of these sites.

You further advised us that you were negotiating with Monmouth Park to place just a liquor store

Letter Dated March 25, 1975 From Nicholas Leone to Frank Petroniro

at their proposed apartment shopping center complex. This hinges on the enactment of the new Zoning Ordinance by Oceanport and a commitment from Monmouth Park.

Should this not become feasible, your second choice is to relocate on a corner at the intersection of Main and Oceanport Avenue. This was considered infeasible at that meeting of February 20, 1975.

6. Although not thorougly discussed, the Kincaid property was mentioned as a possiblity prior to its recent sale as well as the parcel of ground just the other side of the bridge behind Pemberton Avenue. (Calao is now developing it)

The Agency staff is limited in its referrals because of the liquor license, but all possible referrals have been made.

If there are any questions or if we may be of any further assistance, please contact this office.

Very truly yours,

NICHOLAS A. LEONE
Assistant Director

NAL/pv

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

(Exhibit DB-171)

COUNTY OF MONMOUTH
Consolidation 13,000
Realty Transfer Fee 23
Date 12/4/74 By Pc

THIS DEED, made the 29th day of November 1974,

Between

KINKADE HOLDING CO. INC.

a corporation existing under and by virtue of the laws of the State of New Jersey having its principal office at 1709 Union Ave. in the Township of Hazlet in the County of Monmouth and State of New Jersey herein designated as the Grantor,

And

MONMOUTH PARK JOCKEY CLUB, a corporation of the State of New Jersey with its prinicpal office located at Oceanport Avenue in the Borough of Oceanport in the County of Monmouth and State of New Jersey herein designated as the Grantees;

Witnesseth, that the Grantor, for and in consideration of TWENTY-THREE THOUSAND and 00/100 ($23,000.-00) DOLLARS lawful money of the United States of America, to it in hand well and truly paid by the Grantees, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the Grantor

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

being therewith fully satisfied, does by these presents grant, bargin, sell and convey unto the Grantees forever,

All that tract or parcel of land and premises, situate, lying and being in the Borough of Oceanport in the County of Monmouth and State of New Jersey, more particularly described as follows:

BEGINNING at a pin set in the westerly side of Oceanport Avenue distant northerly 715 feet from a spike set at the intersection of the westerly line of Oceanport Avenue and the northerly line of Port-au-Peck Avenue; thence (1) Northerly along westerly line of Port-au-Peck Avenue, 150 feet to a point in the southerly line of lands of Wilson; thence (2) South 64 degrees 07 minutes West, along the southerly line of lands of Wilson, 200 feet to a point; thence (3) South 25 degrees 53 minutes East, parallel with the westerly line of Oceanport Avenue 150 feet to a pin set; thence (4) North 64 degrees 07 minutes East, 200 feet to the point or place of BEGINNING.

The foregoing description is taken from a survey of part of Lot 22 Block 80-B Lots 20-B and 22-A Block 80-C Lots 7 through 28 and part of 29, part of 30, Lots 31 through 54 and Lots 56 through 68 Block 80-A-25 Borough of Oceanport, Monmouth County, N.J., Richard T. Noble, P.E. & L.S. dated August 24, 1973 revised October 30, 1973.

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

BEING AND INTENDED to be part of the same lands and premises conveyed to Kinkade Holding Co. from George S. Kinkade and Ester Kinkade, his wife dated November 3, 1953 recorded in the Monmouth County Clerk's Office December 15, 1953 in Deed Book 2464 page 462.

Together with all and singular the buildings, improvements, ways woods, waters watercourses, rights liberties, privileges, hereditaments and appurtences to the same belonging or in any wise appertaining and the revision and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; *And also* all the estate, right, title, interest, use, possession, property, claim and demand whatsoever, of the Grantor both in laws and in equity, of, in and to the premises herein described, and every part and parcel thereof, with the appurtenances. *To have and hold* all and singular, the premises herein described, together with the appurtenances, unto the Grantees and to Grantees' proper use and benefit forever.

And the Grantor convenants that it has not done or executed, or knowingly suffered to be done or executed, any act, deed or thing whatsoever whereby or by means whereof the premises conveyed herein, or any part thereof, now are or at any time hereafter, will or may be charged or encomumbered in any manner or way whatsoever.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appro-

priate gender or number as the text of the within instrument may require.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation.

In Witness Whereof, the Grantor has caused these presents to be signed and attested by its proper corporate officers and its corporate seal to be hereto affixed the day and year above written.

KINKADE HOLDING CO., INC.

By: EUGENE E. KINKADE
President

ATTEST:

CHARLES A. KINKADE
Secretary

(Seal)

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

State of New Jersey, County of Monmouth ss: *Be it Remembered,* that on November 29, 1974, before me, the subscriber, A Notary Public of the State of New Jersey personnally appeared Charles A. Kinkade who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Secretary of Kinkade Holding Co., Inc. the Corporation named in the within instrument; that Eugene E. Kinkade is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his name thereto as attesting witness; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, Sec. 1(c), is $23,000.00

CHARLES A. KINKADE

Sworn to and subscribed before me,
the date aforesaid,

MICHAEL KINGSLEY

(Seal)

Prepared by William L. Russell, Jr. Esq.

Deed Dated November 29, 1974 From Kinkade Holding Co., Inc. to Monmouth Park Jockey Club

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss.:

I, Jane G. Clayton, Clerk of the County of Monmouth, and also Deputy Clerk of the Superior Court, in and for said County, the same being a Court of Record,

DO HEREBY CERTIFY that the foregoing copy of Deed

KINKADE HODING CO., INC.

TO

MONMOUTH PARK JOCKEY CLUB

is true and correct as the same remains on record in my office in book 3908 OF DEEDS ON PAGE 687 & C.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said Court and County, at Freehold, this 28th day of September A.D. One Thousand nine hundred and Eighty-three

JANE G. CLAYTON
County Clerk

(Seal)

(3)

Supreme Court, U.S.
FILED
DEC 3 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-622
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

FRANK PIETRONIRO, Vice-President,
MARY PIETRONIRO, Pres.,
PIET CORPORATION

Petitioners,

vs.

BOROUGH OF OCEANPORT, CLEMENT SOMMERS, ELWOOD BAXTER, LOUIS SYLVAIN, GEORGE BARRETT, NICHOLAS LEONE

Respondents

REPLY BRIEF OF PETITIONERS IN RESPONSE TO RESPONDENTS' BRIEF IN OPPOSIITON TO THE PETITION FOR A WRIT OF CERTIORARI

CYNTHIA P. LIEBLING
JOSEPH F. MATTICE
700 Mattison Ave.,
Asbury Park, NJ 07712
(201) 775-1966
Counsel for Petitioner

BEST AVAILABLE COPY

QUESTION PRESENTED

DID THE THIRD CIRCUIT CREATE A CONFLICT WITH THE FOURTH CIRCUIT BY USING THE RULE AND RATIONALE OF AMERICAN DRY CLEANERS VS. U.S. DEPARTMENT OF TRANSPORTATION (a case where services were adequate and and the municipality held no land for disposal) INSTEAD OF REVIEW CONSIDERATIONS DISTINCTLY ESTABLISHED AND DIFFERENTIATED BY THE FOURTH CIRCUIT IN M. CROCKIN CO. VS. PORTSMOUTH REDEVELOPMENT AUTH. FOR PETITIONERS' CASE (in cases where services are inadequate and the municipality holds land for disposal having the ability to convey it).

POINT ONE: THE RECENT FOURTH CIRCUIT CASE OF AMERICAN DRY CLEANERS V. U.S. DEPT. OF TRANSPORTATION, INTERPRETING THE CASE OF M. CROCKIN CO. V. PORTSMOUTH REDEVELOPMENT AUTHORITY, IN PETITIONER'S FAVOR, ESTABLISHES A CONFLICT WITH THE THIRD CIRCUIT DECISION IN THIS MATTER.

ARGUMENT

In American Dry Cleaners v. U.S. Department of Transportation, 722 F.2d. 70 (4th Cir. 1983), a business displacee conceded that defendants rendered adequate relocation services. He alleged that, even so, defendants still had the duty to obtain for him an adequate replacement location, even though the adequate services he received failed to uncover same. Only in this limited fact situation did the 4th Circuit rule that this was not the case. The 4th Circuit distinguished this case in two ways from Crockin-Piet situations, making its ruling inapplicable in American Dry Cleaners, where:

a.) The municipality acquires land in the renewal and fails to dispose of parcels in the advisory program under the 51% residential-49 % commercial Congressional ratio

for development; (RATTI PARCELS) and where

b.The Plaintiffs, as in the Crockin-Piet cases, testify that the relocation advisory services they receive are inadequate and unsatisfactory. (See testimony of Bataas and Pietroniro, Appendix, pp. A1-A4)

The Fourth Circuit stated:

> *(Distinguishing the American Dry Cleaners decision)*
>
> *..In the Crockin case, the authority owned the replacement location and had the ability to convey it..Here the government does not own a replacement location and has nothing to convey..The legality of the program in Crockin (where the authority held land for disposal) should be determined in light of allegations that..the parcel should have been made available.." Dry Cleaners, supra, 722 F.2d. at 73-74.*

An examination of the Third Circuit decision here demonstrates that the rationale in the American Dry Cleaners decision (where the authority owned no land to dispose of) has been improperly applied to Crockin-Piet facts (where the Boro owned RATTI LAND for disposal), creating a distinct conflict between the Third and the

Fourth Circuits. (See decision of the 3d. Circuit, Appendix within original petition pp. A22-A23, A12) Such warrants review upon certiorari to settle the above principles for all business displacees in this country.

The Fourth Circuit, in Crockin, supra, 437 F.2d. 784 (4th Cir. 1971) has consistently held that, where services are alleged inadequate and where the defendants refuse to extend purchase options to displacees, that such presents a fact situation as to whether or not advisory service laws have been breached:

> *"..Crockin should have the opportunity to prove that the Authority failed to comply with the regulations ..and plan..determined in light of the allegation the only feasible assistance was to make the parcel available..Crockin, supra, at p. 785, American Dry Cleaners, supra at p. 73.. (EMPHASIS ADDED)..... Crockin alleged (defendants) realized he needed that assistance, had the ability to grant it, and that such assistance was compatible with the use for which the parcel was designated.."*

The foregoing consideration apply to renewal tracts, such as the RATTI PARCELS,

acquired in the renewal by the Boro. (See testimony at Appendix, pp. A4-A7).

Like the Crockin plaintiff, Piet's argument as to the appropriateness of a proposed commercial use on a RATTI PARCEL was a matter of fact for district court resolution. The issue was that of Piet's proposed use versus the municipality's proposed use, of which the municipality's was none since the RATTI PARCELS are vacant to this day. (EMPHASIS ADDED) Piet aptly characterized this at trial as the municipality's refusal to extend relocation opportunities. (Testimony, App. p.A9)

Conflictingly, the Third Circuit, on the above issue of use appropriateness, has ruled as a matter of law that the question is now one governed totally by initial zoning, which effectively obliterates national goals and sanctions the preferential treatment accorded the similarly displaced professional commercial operators extended preferential purchase contracts in the RATTI TRACT, without articulating standards for review of same.

(Opinion of 3d. Cir., App. p. A22-A23,A12)

This conflicts with Crockin, where the 4th Circuit struck down preferential treatment:

> *"Plaintiff's assertion that local redevelopment authority denied it equal protection..because other owners..were permitted to acquire renewal parcels..but Plaintiff was not permitted to acquire a parcel presented a question to be determined upon the merits.." Crockin v. Portsmouth, 437 F.2d. 785 (4th Cir. 1971)*

In Crockin, the Court further stated that the Plaintiff was entitled to attack either the plan or services given under the regulations, contrary to respondents' contentions. THE OCEANPORT RELOCATION PLAN, cited in the Appendix hereto, furthermore, contained the wording within the statutory regulations as the Boro's affirmative obligation. (Appendix herein at pp. A7-A9)

In the Piet Corp. case, defendant Leone admitted that he did not provide proper federal information upon referrals. Both Pietroniro and Bataas, another licensee, also testified this was the case. (App.

pp.A1-A4 Advisory assistance to comparables was lacking. Likewise, Pietroniro testified that defendants refused all of his overtures for a RATTI PARCEL similar to the parcel allowed the professional commercial operators, and this the defendants freely admitted in this case. (Appendix, p. A6-A7) Such admitted denials of relocation assistance are supported by sufficient evidence in this record. Piet further testified he was not aware of the KINCAID TRACT or Batass' negotiations upon it until after it was sold to the Track and he was informed of such by Councilman Dellera. (App. testimony at pp. A3-A4).

Similarly, the remaining contentions of the Respondents are without merit. To the contrary, Piet could not have applied for a variance to the Board of Adjustment nor bid upon a RATTI PARCEL. This is because the LPA defendants acknowledged they refused to make any RATTI PARCELS available to Piet as a procedural condition subsequent to any further actions on

the Plaintiffs' part. Most signifigantly, this was reinforced by the testimony of Pietroniro, Baxter and Sommers in the Appendix at pp. A4-A7)

The variance given to the select professional commercial operators underscores the procedural disparity, underscoring this point fully:

A. The LPA must first enter into a purchase contract with the displacee. The Shell Station was allowed to remain in the RATTI AREA with the select class first extended a purchase option upon a residential lot subject then to the application for a variance.

B. The displacees then applied for a variance to the Adjustment Board. The area composed some commercial property occupied by the Shell station, which was also accorded a variance. (Testimony of Pietroniro, Rec. A741-744, App. p.A9-A10)

C. The LPA then extended preferen-

tial recommendations to the Board for the select class asking the Board to approve commercial development on the parcel:

> *PIETRONIRO: "..It was through the Zoning Board of Oceanport with the recommendation of the Mayor and Council these parcels be designated commercial..The commercial property was the Shell station and the doctor's office..(both) given a variance. (Record, App. A741-742)*

D. The Board then concurred and left the actual granting of the variance to the LPA-Council defendants, who then brought their initial recommendations, given through the relocation advisory assistance program, to full fruition:

> *Q. Who..did they get the variance from..the Town Council? A. Yes.. THE COURT: Is counsel prepared to stipulate it came through the Board of Adjustment? COUNSEL (ALL): So stipulated." Rec. A741)*

Without an essential beginning purchase contract on a parcel, Piet was denied equal protection and proper assistance, just as the Crockin plaintiff was. This was characterized at oral argument at the Third Circuit by counsel, regarding the vacant RATTI parcels:

"..You can't apply for a variance if the governing board won't make a parcel available. You are putting the cart before the horse.. Baxter and Sommers admit that Piet.. made many overtures for this property and that they were all unfavorably met..Why couldn't the..license owners, who needed the help so much more--why couldn't they have the same opportunity on this vacant land to at least bid on a parcel and submit a plan for a variance to the Board of Adjustment after they entered into a contract to buy the parcel.."

They had the particular piece of land, knew we (the licensees) needed the assistance, they had the ability to grant it!!And yet there were these people with licenses that desperately needed a piece to relocate that were just shut off from the opportunity..

"If they parceled off Parcel 6 and allowed the doctor to buy it subject to the obtaining of a later variance, they could have easily done it on the vacant land.."(Oral argument; U.S. Third Circuit, at pp. 32,35)

CONCLUSION

For all of the foregoing reasons, a Writ of Certiorari should issue.

RESPECTFULLY,

Cynthia Liebling

CYNTHIA LIEBLING

Attorney for the PETITIONERS.

TESTIMONY REGARDING THE KINCADE PROPERTY AND STALDER AND ARNOLD SITES DEMONSTRATING CURRENT AND CONTINUING INFORMATION UNDER FEDERAL LAW WAS NOT PROVIDED TO THE PETITIONERS HEREIN

LEONE:

Q. Did you ever provide any.. of the businesses with any type of information such as costs of renovation, square footage involving the properties, tidal conditions..?

A. To the best of my knowledge I did not and it is not required as a part of our assistance." (A2202 Record, Appendix)

PIETRONIRO:

A. The LPA, which was the Mayor and Councilmen, pointed to a piece of property and said go locate your business there. We have to go all over to find out..(Leone) He was the relocation officer..supposed to assist me and find out the costs and what it entails to fix it..That was the job of the LPA to investigate and say.. it is going to cost you $50,000 to improve this property..We did the best we could..We got no cooperation..We were put out on the streets.."(Record App. A872-873, A1031, A1107)

PIETRONIRO:
A. All they did, all their relocation efforts were--'There's a piece of property. There is a piece of property..Do you want the two pieces'(referring to the Stalder and Arnold referrals)..They would not assist you on the cost plus the moving..I had to go ahead and try to find out myself..(Record, App. A1220)

BATAAS:
A.I did a lengthy investigation on the KINCADE PROPERTY..I researched that property and it took me approximately 1 1/2 years by foot work by myself (EMPHASIS ADDED). I notified the Mayor and these three members of the Council I planned on moving my bar there..I did most of the research on my own.." (Record, Appendix A686-687, A712)

BATAAS:
Q. You had the same opportunity to purchase the KINCADE PROPERTY, isn't that a fact? A. Wrong. Q. Why didn't you have the same opportunity when you started looking at the KINCADE PROPERTY to buy it? A. I answered that question before sir. Q. Be-

cause it took you l l/2 years to determine who owned the property. Is that your testimony? Is it or isn't it? A. Yes, it is. (Record, Appendix A715)

PIETRONIRO: (regarding the KINCADE PROPERTY) A. Mr. Sylvain-- Mr. Leone emphatically lied about the Kincaid Property. Q. What property did they refer you to that was not available? A. They referred me after it was sold.. the KINCAID PROPERTY. (Record A1220)

A. I testified that I knew the property after the sale because Mr. Bataas, that was displaced here had meetings with the LPA to move his liquor license there.

Q. But you knew Mr. Bataas was engaged in the discussions with the owner of the KINCADE PROPERTY. What did you think they were talking about?

*A. I FOUND OUT AFTER. (EMPHASIS ADDED)*** *Record Appendix A1221-1222)*

Q. So you knew about its (KINCADE) avail-

**/ *This testimony shows that Pietroniro was not independently aware of the Kincade tract prior to its sale, contrary to the appellants' contentions in their brief.*

ability before it was sold to Monmouth Park, didn't you?

*A. No sir..I didn't know that the property was for sale until after it was bought by Monmouth Park..I knew that he (Bataas) had been negotiating on it, then it was sold, and I found out about it after from Councilman Dellera.*** (Record, Appendix A.1222)

TESTIMONY REGARDING THE RATTI PARCELS

PIETRONIRO: On..the Ratti Property, any zones in that designated for the relocation of the businesses? A. No..this is approximately ten acres of ground that has been vacant for 8-9..7-8 years. (Record, Appendix A741-742)

Q..Who had title to this ground..(referring to the Ratti area) A. All that property, except possibly the Turf Bar.. there at the old location about 100 yards over there..some of it was still owned by the businessmen and some was acquired by the LPA..Q. So the LPA owned

some land in there, correct? A. Yes. (A854)

Q. Were there any other parcels..that had been acquired in the condemnation, offered for relocation by the Borough for a similar price of around $10,000..were any other parcels offered for relocation?

A. There was no parcel offered to anyone except the doctor and the dentist in the affected area where everything was torn down..(A858)

Q. What parcels..did you try to relocate on using your owninitiative? A. I tried very strenuously to obtain a small piece of ground where the RATTI property was..
(A859)
..The fact that I was located here and the Shell station was over here..the gas station stayed (by variance in the Ratti area) but I was evicted, I begged at the time for a piece of property over in here..(referring to the Ratti area).. I told him that I had a license to sell my wares the same as the gas line to sell

gasoline..(EMPHASIS ADDED, Appendix, Rec. A741, 742, 743)

TESTIMONY REGARDING THE DEFENDANTS' ADMITTED DENIALS OF PURCHASE OPTIONS UPON RATTI PARCELS TO PETITIONER

*SOMMERS' AFFIDAVIT IN EVIDENCE, Pl. Exh.41: (EXCERPT) ..While principals of the Piet Corporation have often expressed interest in that particular piece of property.. overtures have been unfavorably received by the governing body of the Borough of Oceanport.." (A753-754)***/*

Q. What property was he alluding to in the last statement, of your own personal knowledge? A. Pietroniro: The opposite corner to where I was called the RATTI PROPERTY": (Record, Appendix A754)

BAXTER'S AFFIDAVIT, Pl. Exh. 31:

"I have reviewed the affidavit of Joseph Boynton..in particular his statement that I promised to sell land immediately across the street from the present location of the Colonial Bar to the Piet Corp. sub-

****/ The LPA members were also Council members in Oceanport.*

ject to the obtaining of a variance..

I recall that meeting and at no time did I make such a promise.. Moreover, Piet Corp. since that meeting has periodically expressed interest in the piece of property and those requests have been unfavorably reviewed by myself and my fellow members on the Oceanport Borough Council.."(Record, Appendix A288-289)

EXCERPTS FROM OCEANPORT'S RELOCATION PLAN EMBODYING THE STATUTORY LANGUAGE OF OBLIGATIONS IMPOSED ON DEFENDANTS UNDER THE HOUSING ACT AND UNIFORM RELOCATION ASSISTANCE ACT.

TESTIMONY OF BOYNTON:

..This is the application for first year funding by the Borough to HUD for NDP.. (Defense Exh. 143)..Q. Does it not say--

"ADVISE AND ASSIST COMMERCIAL TENANTS IN RELOCATION MATTERS AND INSURE MAXIMUM OPPORTUNITY FOR THEIR SATISFACTORY RELOCATION"?

"IT IS AS IMPORTANT TO THE BUSINESSES BEING FORCED TO MOVE AS IT IS TO THE BORO'S OVERALL RENEWAL PROGRAM THAT THE BOROUGH ASSUME THIS RESPONSIBILITY AND ASSIST THE RELOCATIONS OF BUSINESS IN EVERY WAY POSSIBLE(Emphasis)" A. Yes, it does. (Rec. Appendix A.1688-1689)

..Q. Does it not state..

THE BOROUGH SHALL PERIODICALLY EVALUATE THE RELOCATION ASSISTANCE ADVISORY PROGRAM TO DETERMINE ITS EFFECTIVENESS..ALL FACTORS LISTED WITHIN Chapter 2, Sec. 2.20a of the RELOCATION HANDBOOK OF HUD 1371.1 WILL BE REVIEWED IN CONSIDERING THE QUALITY AND THE QUANTITY OF THE SERVICES RENDERED.." A. Yes.

Q. Based upon that representation to HUD, were you reasonably satisfied that you would not be put out of business.. that relocation opportunities would be complied with..?

A. Yes. At the beginning, yes.(A1690-A1694)

Q. Did you have cause to look at the 2d year book (application) DB-142?

Q. Uses to be permitted ..planning criteria.. standards used to determine the following:

"SUPPORTING RETAIL USES WHICH SERVE THE CONVENIENCE NEEDS OF THE NEIGHBORHOOD WILL BE PERMITTED.. IT IS THE INTENT OF THE PLAN TO CONCENTRATE THE NEIGHBORHOOD COMMERCIAL AROUND THE NEUCLEUS OF EXISTING USES WHICH WILL REMAIN" (referring to the gas station and professional commercial displacees allowed to remain and relocate in the RATTI AREA).. Sec. 501: Commercial development is not planned for this active (2d) year, but subsequent planning will permit definitive commercial areas to be identified..Specific design controls will be presented with the land disposition supplement.."(A1694)@@/

A. I felt that they were telling HUD they were going to put the commercial back where it was..We were the only commercial area in Oceanport, so to speak. (A1694)@@/

TESTIMONY REGARDING THE UNAVAILABILITY OF THE NEW COMMERCIAL ZONE AND THE DEFENDANTS' REFUSALS TO DISPOSE OF RATTI PARCELS UNDER THE 51%-49% NATIONAL GOALS PROGRAM OF CONGRESS.

PIETRONIRO:
"...On the transcript .. that 51% of the property could be residential and the other 49% (in the RATTI TRACT) could be commercial..I felt from what they had said that I was safe, but I was concerned with everyone else that any other businessman that wanted to relocate in that area, 49% being commercial, there would be enough room for everyone..(Record, App. A1283) ..It (the new commercial zone after renewal) is 90% owned by Monmouth Park Track. It was given and changed. In this percen-

@@/With the onset of renewal, the new commercial zone was unavailable for relocation because it was owned by two private vested interests. The RATTI PARCELS the municipality refused to dispose of left no relocation alternatives at all in the Borough for the displaced licensees, with the defendants failing to adhere to these provisions.

tage the race track owned they said they were going to build a shopping center that would accommodate some of the displacees.. to date they never built anything.." (Record, App. A966)

"..The property ..that I owned.. it was commercial property..I believed the politicians..they told me that not one man would be put out on the street if you let us take this and change it to residential.. but after they got the residential.. they didn't want us anymore because they said we were commercial..whereas it was our property to start out with.. It was all commercial property there..(referring to the renewal RATTI TRACT before the project was put through). (Record, app. A966, 1283, 967)

" (In the Ratti Area after renewal).. The commercial property was the Shell station..given a variance..and the doctor.. given a variance.. from the Town Council.. through the Board of Adjustment ..with recommendations of the Mayor and Council.." (Record, Appendix A740-741)